

(c) **TERMINATION CLAUSE.**—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of the contract in a fiscal year covered by the contract. Funds available for paying termination costs shall remain available for that purpose until the costs associated with termination of the contract are paid.

(d) **CANCELLATION CEILING NOTICE.**—Before a contract described in subsection (b) that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to Congress. The contract may not be awarded until the end of the 30-day period beginning on the date of the notification.

(e) **CONTINGENCY CLAUSE FOR APPROPRIATION OF FUNDS.**—A multiyear contract may provide that performance under the contract after the first year of the contract is contingent on the appropriation of funds and (if the contract does so provide) that a cancellation payment shall be made to the contractor if the funds are not appropriated.

(f) **OTHER LAW NOT AFFECTED.**—This section does not modify or affect any other provision of law that authorizes multiyear contracts.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3903(a)	41:254c(d) (1st sentence).	June 30, 1949, ch. 288, title III, §304B, as added Pub. L. 103-355, title I, §1072, Oct. 13, 1994, 108 Stat. 3270.
3903(b)	41:254c(a).	
3903(c)	41:254c(b).	
3903(d)	41:254c(c).	
3903(e)	41:254c(d) (last sentence).	
3903(f)	41:254c(e).	

§ 3904. Contract authority for severable services contracts and multiyear contracts

(a) **COMPTROLLER GENERAL.**—The Comptroller General may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and nonaudit-related services to the same extent as executive agencies under sections 3902 and 3903 of this title.

(b) **LIBRARY OF CONGRESS.**—The Library of Congress may use available funds to enter into contracts for the lease or procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and services pursuant to sections 3902 and 3903 of this title.

(c) **CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.**—The Chief Administrative Officer of the House of Representatives may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to

the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(d) **CONGRESSIONAL BUDGET OFFICE.**—The Congressional Budget Office may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and may enter into multiyear contracts for the acquisition of property and services to the same extent as executive agencies under the authority of sections 3902 and 3903 of this title.

(e) **SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE.**—Subject to regulations prescribed by the Committee on Rules and Administration of the Senate, the Secretary and the Sergeant at Arms and Doorkeeper of the Senate may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent and under the same conditions as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services to the same extent and under the same conditions as executive agencies under the authority of section 3903 of this title.

(f) **CAPITOL POLICE.**—The United States Capitol Police may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(g) **ARCHITECT OF THE CAPITOL.**—The Architect of the Capitol may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(h) **SECRETARY OF THE SMITHSONIAN INSTITUTION.**—The Secretary of the Smithsonian Institution may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services under the authority of section 3903 of this title.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3775.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3904(a)	41:2531-1.	Pub. L. 105-18, title II, § 7004, June 12, 1997, 111 Stat. 192.
3904(b)	41:2531-2.	Pub. L. 106-57, title II, § 207, Sept. 29, 1999, 113 Stat. 423.
3904(c)	41:2531-3.	Pub. L. 106-554, § 1(a)(2) [title I, §§ 101, 110], Dec. 21, 2000, 114 Stat. 2763A-100, 2763A-108.
3904(d)	41:2531-4.	Pub. L. 108-7, div. H, title I, §§ 5, 1002, 1202, Feb. 20, 2003, 117 Stat. 350, 357, 373.
3904(e)	41:2531-5.	
3904(f)	41:2531-6.	Pub. L. 108-72, § 4, Aug. 15, 2003, 117 Stat. 889.
3904(g)	41:2531-7.	
3904(h)	41:2531-8.	

In subsections (a)–(c) and (e)–(h), the words “procurement of severable services” are substituted for “acquisition of severable services” for consistency with 41:2531, restated as section 3902 of the revised title.

In subsection (c), the words “During fiscal year 2001 and any succeeding fiscal year” are omitted as obsolete.

In subsection (d), the words “Beginning on December 21, 2000, and hereafter” are omitted as obsolete.

In subsection (e), the text of 41:2531-5(b) is omitted as obsolete.

In subsection (f), the text of 41:2531-6(b) is omitted as obsolete.

In subsection (g), the text of 41:2531-7(b) is omitted as obsolete.

In subsection (h), the text of 41:2531-8(b) is omitted as obsolete.

§ 3905. Cost contracts

(a) **COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.**—The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(b) **COST-PLUS-A-FIXED-FEE CONTRACTS.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the estimated cost of the contract, not including the fee, as determined by the agency head at the time of entering into the contract.

(2) **EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**—The fee in a cost-plus-a-fixed-fee contract for experimental, developmental, or research work shall not exceed 15 percent of the estimated cost of the contract, not including the fee.

(3) **ARCHITECTURAL OR ENGINEERING SERVICES.**—The fee in a cost-plus-a-fixed-fee contract for architectural or engineering services relating to any public works or utility project may include the contractor’s costs and shall not exceed 6 percent of the estimated cost, not including the fee, as determined by the agency head at the time of entering into the contract, of the project to which the fee applies.

(c) **NOTIFICATION.**—All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either the simplified acquisition threshold or 5 percent of the total estimated cost of the prime contract.

(d) **RIGHT TO AUDIT.**—A procuring agency, through any authorized representative thereof, has the right to inspect the plans and to audit

the books and records of a prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3776.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3905(a)	41:254(b) (1st sentence words before 1st comma).	June 30, 1949, ch. 288, title III, § 304(b), 63 Stat. 395; July 12, 1952, ch. 703, § 1(m), 66 Stat. 594; Pub. L. 103-355, title I, § 1071, title IV, § 4402(c), title X, § 10005(e), Oct. 13, 1994, 108 Stat. 3270, 3349, 3408.
3905(b)	41:254(b) (1st sentence words after 1st comma).	
3905(c)	41:254(b) (last sentence words before semicolon).	
3905(d)	41:254(b) (last sentence words after semicolon).	

§ 3906. Cost-reimbursement contracts

(a) **DEFINITION.**—In this section, the term “executive agency” has the same meaning given in section 133 of this title.

(b) **REGULATIONS ON THE USE OF COST-REIMBURSEMENT CONTRACTS.**—The Federal Acquisition Regulation shall address the use of cost-reimbursement contracts.

(c) **CONTENT.**—The regulations promulgated under subsection (b) shall include guidance regarding—

(1) when and under what circumstances cost-reimbursement contracts are appropriate;

(2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts; and

(3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

(d) **ANNUAL REPORT.**—

(1) **IN GENERAL.**—The Director of the Office of Management and Budget shall submit an annual report to Congressional committees identified in subsection (e) on the use of cost-reimbursement contracts and task or delivery orders by all executive agencies.

(2) **CONTENTS.**—The report shall include—

(A) the total number and value of contracts awarded and orders issued during the covered fiscal year;

(B) the total number and value of cost-reimbursement contracts awarded and orders issued during the covered fiscal year; and

(C) an assessment of the effectiveness of the regulations promulgated pursuant to subsection (b) in ensuring the appropriate use of cost-reimbursement contracts.

(3) **TIME REQUIREMENTS.**—

(A) **DEADLINE.**—The report shall be submitted no later than March 1 and shall cover the fiscal year ending September 30 of the prior year.

(B) **LIMITATION.**—The report shall be submitted from March 1, 2009, until March 1, 2014.

(e) **CONGRESSIONAL COMMITTEES.**—The report required by subsection (d) shall be submitted to—