

## 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—

(1) the Committee on Oversight and Government Reform of the House of Representatives;  
 (2) the Committee on Homeland Security and Governmental Affairs of the Senate;  
 (3) the Committees on Appropriations of the House of Representatives and the Senate; and  
 (4) in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3777.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3906 .....	41:254 note.	Pub. L. 110-417, [div. A], title VIII, §864(a), (b), (d), (e), (f)(2), (g), Oct. 14, 2008, 122 Stat. 4549.

In subsection (b), the words “Not later than 270 days after the date of the enactment of this Act” are omitted because of section 6(f) of the bill. The words “shall address” are substituted for “shall be revised to address” to reflect the permanence of the provision.

In subsection (d), the words “Subject to subsection (f)” are omitted as unnecessary.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

##### AMENDMENT OF FEDERAL ACQUISITION REGULATION

Pub. L. 111-350, §6(f)(5), Jan. 4, 2011, 124 Stat. 3855, provided that: “The Federal Acquisition Regulation shall be amended to meet the requirements of section 3906(b) of title 41, United States Code, not later than 270 days after October 14, 2008.”

### CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS

Sec.	
4101.	Definitions.
4102.	Authorities or responsibilities not affected.
4103.	General authority.
4104.	Guidance on use of task and delivery order contracts.
4105.	Advisory and assistance services.
4106.	Orders.

#### § 4101. Definitions

In this chapter:

(1) **DELIVERY ORDER CONTRACT.**—The term “delivery order contract” means a contract for property that—

(A) does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the delivery of property during the period of the contract.

(2) **TASK ORDER CONTRACT.**—The term “task order contract” means a contract for services that—

(A) does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the performance of tasks during the period of the contract.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3778.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4101 .....	41:253k.	June 30, 1949, ch. 288, title III, §303K, as added Pub. L. 103-355, title I, §1054(a), Oct. 13, 1994, 108 Stat. 3265.

#### § 4102. Authorities or responsibilities not affected

This chapter does not modify or supersede, and is not intended to impair or restrict, authorities or responsibilities under sections 1101 to 1104 of title 40.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3778.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4102 .....	41:253h note.	Pub. L. 103-355, §1054(b), Oct. 13, 1994, 108 Stat. 3265.

The text of section 1054(b)(1) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355, 41:253h note) is omitted as obsolete.

#### § 4103. General authority

(a) **AUTHORITY TO AWARD.**—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task or delivery order contract for procurement of services or property.

(b) **SOLICITATION.**—The solicitation for a task or delivery order contract shall include—

(1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option;

(2) the maximum quantity or dollar value of the services or property to be procured under the contract; and

(3) a statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) **APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.**—The head of an executive agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in section 3304(a) of this title applies to the contract and the use of those procedures is approved in accordance with section 3304(e) of this title.

(d) **SINGLE AND MULTIPLE CONTRACT AWARDS.**—

(1) **EXERCISE OF AUTHORITY.**—The head of an executive agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the executive agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to 2 or more sources.

(2) **DETERMINATION NOT REQUIRED.**—No determination under section 3303 of this title is re-