

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3705(a) .....	41:253b(f)(1) (1st sentence).	June 30, 1949, ch. 288, title III, §303B(f), (g) (related to §303B(f)), as added Pub. L. 104-106, title XLI, §4104(b)(3), Feb. 10, 1996, 110 Stat. 645.
3705(b) .....	41:253b(f)(1) (last sentence).	
3705(c) .....	41:253b(f)(2).	
3705(d) .....	41:253b(f)(3).	
3705(e) .....	41:253b(f)(4).	
3705(f) .....	41:253b(g) (related to 41:253b(f)).	

**§ 3706. Encouragement of alternative dispute resolution**

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3706 .....	41:253b(h).	June 30, 1949, ch. 288, title III, §303B(h), as added Pub. L. 104-106, title XLI, §4104(b)(3), Feb. 10, 1996, 110 Stat. 645.

**§ 3707. Antitrust violations**

If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, the agency head shall refer the bid or proposal to the Attorney General for appropriate action.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3707 .....	41:253b(i).	June 30, 1949, ch. 288, title III, §303B(i), formerly §303B(e), as added Pub. L. 98-369, title VII, §2711(a)(2), July 18, 1984, 98 Stat. 1180; redesignated as §303B(f), Pub. L. 103-355, title I, §1064(1), Oct. 13, 1994, 108 Stat. 3268; redesignated as §303B(i), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

**§ 3708. Protests**

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, and an actual or prospective offeror requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title

5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the executive agency may—

(1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of section 3554 of title 31; and

(2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of section 3554(c).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3708(a) .....	41:253b(k).	June 30, 1949, ch. 288, title III, §303B(k), formerly §303B(h), as added Pub. L. 103-355, title I, §1065, Oct. 13, 1994, 108 Stat. 3269; redesignated as §303B(k), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645; Pub. L. 104-106, title XLI, §5607(c), Feb. 10, 1996, 110 Stat. 701, as amended Pub. L. 104-201, title X, §1074(b)(7) (less effective date), Sept. 23, 1996, 110 Stat. 2660.
3708(b) .....	41:253b(l).	June 30, 1949, ch. 288, title III, §303B(l), formerly §303B(i), as added Pub. L. 103-355, title I, §1066, Oct. 13, 1994, 108 Stat. 3269; redesignated as §303B(l), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645.

**CHAPTER 39—SPECIFIC TYPES OF CONTRACTS**

- Sec. 3901. Contracts awarded using procedures other than sealed-bid procedures.
- 3902. Severable services contracts for periods crossing fiscal years.
- 3903. Multiyear contracts.
- 3904. Contract authority for severable services contracts and multiyear contracts.
- 3905. Cost contracts.
- 3906. Cost-reimbursement contracts.

**Statutory Notes and Related Subsidiaries**

SEPARABILITY

Act June 30, 1949, ch. 288, title VI, §604, formerly title V, §504, 63 Stat. 403, renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583, provided that: "If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Pub. L. 115-232, div. A, title VIII, §889, Aug. 13, 2018, 132 Stat. 1917, as amended by Pub. L. 116-283, div. A, title X, §1081(d)(5), Jan. 1, 2021, 134 Stat. 3874, provided that:

"(a) PROHIBITION ON USE OR PROCUREMENT.—(1) The head of an executive agency may not—

"(A) procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or

service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

“(B) enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

“(2) Nothing in paragraph (1) shall be construed to—

“(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

“(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

“(b) PROHIBITION ON LOAN AND GRANT FUNDS.—(1) The head of an executive agency may not obligate or expend loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems described in subsection (a).

“(2) In implementing the prohibition in paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs, including the heads of the Federal Communications Commission, the Department of Agriculture, the Department of Homeland Security, the Small Business Administration, and the Department of Commerce, shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

“(3) Nothing in this subsection shall be construed to—

“(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

“(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

“(c) EFFECTIVE DATES.—The prohibition under subsection (a)(1)(A) shall take effect one year after the date of the enactment of this Act [Aug. 13, 2018], and the prohibitions under subsections (a)(1)(B) and (b)(1) shall take effect two years after the date of the enactment of this Act.

“(d) WAIVER AUTHORITY.—

“(1) EXECUTIVE AGENCIES.—The head of an executive agency may, on a one-time basis, waive the requirements under subsection (a) with respect to an entity that requests such a waiver. The waiver may be provided, for a period of not more than two years after the effective dates described in subsection (c), if the entity seeking the waiver—

“(A) provides a compelling justification for the additional time to implement the requirements under such subsection, as determined by the head of the executive agency; and

“(B) submits to the head of the executive agency, who shall not later than 30 days thereafter submit to the appropriate congressional committees, a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity’s supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the entity’s systems.

“(2) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National Intelligence may provide a waiver

on a date later than the effective dates described in subsection (c) if the Director determines the waiver is in the national security interests of the United States.

“(f) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives.

“(2) COVERED FOREIGN COUNTRY.—The term ‘covered foreign country’ means the People’s Republic of China.

“(3) COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.—The term ‘covered telecommunications equipment or services’ means any of the following:

“(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

“(B) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

“(C) Telecommunications or video surveillance services provided by such entities or using such equipment.

“(D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“(4) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given the term in section 133 of title 41, United States Code.”

[Pub. L. 116-283, div. A, title X, §1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(5) of Pub. L. 116-283 to section 889 of Pub. L. 115-232, set out above, is effective as of Aug. 13, 2018, and as if included in Pub. L. 115-232.]

#### SHARE-IN-SAVINGS CONTRACTS

Act June 30, 1949, ch. 288, title III, §317, as added Pub. L. 107-347, title II, §210(b), Dec. 17, 2002, 116 Stat. 2934, provided that:

“(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40, United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

“(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

“(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

“(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

“(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

“(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

“(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

“(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

“(B) Amounts retained by the agency under this subsection shall—

“(i) without further appropriation, remain available until expended; and

“(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

“(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

“(A) appropriations available for the performance of the contract;

“(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

“(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

“(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

“(3)(A) Subject to subparagraph (B), the head of an executive agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

“(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

“(I) 25 percent of the estimated costs of a cancellation or termination; or

“(II) \$5,000,000.

“(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director’s designee.

“(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all executive agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘contractor’ means a private entity that enters into a contract with an agency.

“(2) The term ‘savings’ means—

“(A) monetary savings to an agency; or

“(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

“(3) The term ‘share-in-savings contract’ means a contract under which—

“(A) a contractor provides solutions for—

“(i) improving the agency’s mission-related or administrative processes; or

“(ii) accelerating the achievement of agency missions; and

“(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

“(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

“(ii) acceleration of achievement of agency missions.

“(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.”

### Executive Documents

#### EX. ORD. NO. 13496. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Ex. Ord. No. 13496, Jan. 30, 2009, 74 F.R. 6107, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered that:

SECTION 1. *Policy.* This order is designed to promote economy and efficiency in Government procurement. When the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers’ productivity is enhanced when workers are well informed of their rights under Federal labor laws, including the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.* As the Act recognizes, “encouraging the practice and procedure of collective bargaining and . . . protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection” will “eliminate the causes of certain substantial obstructions to the free flow of commerce” and “mitigate and eliminate these obstructions when they have occurred.” 29 U.S.C. 151. Relying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government’s contracts.

SEC. 2. *Contract Clause.* Except in contracts exempted in accordance with section 3 of this order, all Government contracting departments and agencies shall, to the extent consistent with law, include the following provisions in every Government contract, other than collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and purchases under the simplified acquisition threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403.

“1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the Na-

tional Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The notice shall include the information contained in the notice published by the Secretary of Labor in the Federal Register (Secretary's Notice).

"2. The contractor will comply with all provisions of the Secretary's Notice, and related rules, regulations, and orders of the Secretary of Labor.

"3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]]. Such other sanctions or remedies may be imposed as are provided in Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]], or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

"4. The contractor will include the provisions of paragraphs (1) through (3) above in every subcontract entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]]) so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, that if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

**SEC. 3. Administration.**

(a) The Secretary of Labor (Secretary) shall be responsible for the administration and enforcement of this order. The Secretary shall adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order.

(b) Within 120 days of the effective date of this order, the Secretary shall initiate a rulemaking to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of this order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of this order.

(c) Whenever the Secretary finds that an act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions set out in subsection (a) of this section necessary to achieve the purposes of this order, the Secretary promptly shall issue such rules, regulations, or orders as are needed to cause the substitution or addition of appropriate contractual provisions in Government contracts thereafter entered into.

**SEC. 4. Exemptions.** (a) If the Secretary finds that the application of any of the requirements of this order would not serve the purposes of this order or would impair the ability of the Government to procure goods or services on an economical and efficient basis, the Secretary may exempt a contracting department or agency or group of departments or agencies from the requirements of any or all of the provisions of this order with respect to a particular contract or subcontract or any class of contracts or subcontracts.

(b) The Secretary may, if the Secretary finds that special circumstances require an exemption in order to serve the national interest, exempt a contracting department or agency from the requirements of any or all

of the provisions of section 2 of this order with respect to a particular contract or subcontract or class of contracts or subcontracts.

**SEC. 5. Investigation.**

(a) The Secretary may investigate any Government contractor, subcontractor, or vendor to determine whether the contractual provisions required by section 2 of this order have been violated.

Such investigations shall be conducted in accordance with procedures established by the Secretary.

(b) The Secretary shall receive and investigate complaints by employees of a Government contractor or subcontractor, where such complaints allege a failure to perform or a violation of the contractual provisions required by section 2 of this order.

**SEC. 6. Compliance.**

(a) The Secretary, or any agency or officer in the executive branch lawfully designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, regarding compliance with this order as the Secretary may deem advisable.

(b) The Secretary may hold hearings, or cause hearings to be held, in accordance with subsection (a) of this section, prior to imposing, ordering, or recommending the imposition of sanctions under this order. Neither an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under section 7(b) of this order nor the inclusion of a contractor on a published list of noncomplying contractors under section 7(c) of this order shall be carried out without affording the contractor an opportunity for a hearing.

**SEC. 7. Remedies.** In accordance with such rules, regulations, or orders as the Secretary may issue or adopt, the Secretary may:

(a) after consulting with the contracting department or agency, direct that department or agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor to comply with the contractual provisions required by section 2 of this order; contracts may be cancelled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon future compliance: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of the contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that completion of the contract is essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of the contracting department or agency, or his or her designee, continues to object to the issuance of such directive;

(b) after consulting with each affected contracting department or agency, provide that one or more contracting departments or agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary that such contractor has complied with and will carry out the provisions of this order: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of each contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that further contracts or extensions or other modifications of existing contracts with the noncomplying contractor are essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of a contracting department or agency, or his or her designee, continues to object to the issuance of such directive; and

(c) publish, or cause to be published, the names of contractors that have, in the judgment of the Sec-

retary, failed to comply with the provisions of this order or of related rules, regulations, and orders of the Secretary.

SEC. 8. *Reports.* Whenever the Secretary invokes section 7(a) or 7(b) of this order, the contracting department or agency shall report to the Secretary the results of the action it has taken within such time as the Secretary shall specify.

SEC. 9. *Cooperation.* Each contracting department and agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions under this order.

SEC. 10. *Sufficiency of Remedies.* If the Secretary finds that the authority vested in the Secretary by sections 5 through 9 of this order is not sufficient to effectuate the purposes of this order, the Secretary shall develop recommendations on how better to effectuate those purposes.

SEC. 11. *Delegation.* The Secretary may, in accordance with law, delegate any function or duty of the Secretary under this order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

SEC. 12. *Implementation.* To the extent permitted by law, the Federal Acquisition Regulatory Council (FAR Council) shall take whatever action is required to implement in the Federal Acquisition Regulation (FAR) the provisions of this order and any related rules, regulations, or orders issued by the Secretary under this order and shall amend the FAR to require each solicitation of offers for a contract to include a provision that implements section 2 of this order.

SEC. 13. *Revocation of Prior Order and Actions.* Executive Order 13201 of February 17, 2001, is revoked. The heads of executive departments and agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13201.

SEC. 14. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 15. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 16. *Effective Date.* This order shall become effective immediately, and shall apply to contracts resulting from solicitations issued on or after the effective date of the rule promulgated by the Secretary pursuant to section 3(b) of this order.

BARACK OBAMA.

EX. ORD. NO. 13502. USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

Ex. Ord. No. 13502, Feb. 6, 2009, 74 F.R. 6985, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

SECTION 1. *Policy.* (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

SEC. 2. *Definitions.*

(a) The term "labor organization" as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term "construction" as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term "large-scale construction project" as used in this order means a construction project where the total cost to the Federal Government is \$25 million or more.

(d) The term "executive agency" as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term "project labor agreement" as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

SEC. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

SEC. 4. Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, and Executive Orders.

SEC. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

SEC. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

SEC. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

SEC. 8. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

SEC. 9. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. *General.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 11. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

BARACK OBAMA.

EX. ORD. NO. 13981. PROTECTING THE UNITED STATES FROM CERTAIN UNMANNED AIRCRAFT SYSTEMS

Ex. Ord. No. 13981, Jan. 18, 2021, 86 F.R. 6821, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America,

I, DONALD J. TRUMP, President of the United States of America, find that additional actions are necessary to ensure the security of Unmanned Aircraft Systems (UAS) owned, operated, and controlled by the

Federal Government; to secure the integrity of American infrastructure, including America's National Airspace System (NAS); to protect our law enforcement and warfighters; and to maintain and expand our domestic industrial base capabilities.

Accordingly, I hereby order:

SECTION 1. *Policy.* UAS have tremendous potential to support public safety and national security missions and are increasingly being used by Federal, State, and local governments. UAS are used, for example, to assist law enforcement and support natural disaster relief efforts. Reliance on UAS and components manufactured by our adversaries, however, threatens our national and economic security.

United States Government operations involving UAS require accessing, collecting, and maintaining data, which could reveal sensitive information. The use of UAS and critical components manufactured and developed by foreign adversaries, or by persons under their control, may allow this sensitive information to be accessed by or transferred to foreign adversaries. Furthermore, the manufacturing of UAS involves combining several critical components, including advanced manufacturing techniques, artificial intelligence, microelectronic components, and multi-spectral sensors. The Nation's capability to produce UAS and certain critical UAS components domestically is critical for national defense and the security and strength of our defense industrial base.

It is the policy of the United States, therefore, to prevent the use of taxpayer dollars to procure UAS that present unacceptable risks and are manufactured by, or contain software or critical electronic components from, foreign adversaries, and to encourage the use of domestically produced UAS.

SEC. 2. *Reviewing Federal Government Authority to Limit Government Procurement of Covered UAS.* (a) The heads of all executive departments and agencies (agencies) shall review their respective authorities to determine whether, and to what extent consistent with applicable law, they could cease:

(i) directly procuring or indirectly procuring through a third party, such as a contractor, a covered UAS;

(ii) providing Federal financial assistance (e.g., through award of a grant) that may be used to procure a covered UAS;

(iii) entering into, or renewing, a contract, order, or other commitment for the procurement of a covered UAS; or

(iv) otherwise providing Federal funding for the procurement of a covered UAS.

(b) After conducting the review described in subsection (a) of this section, the heads of all agencies shall each submit a report to the Director of the Office of Management and Budget identifying any authority to take the actions outlined in subsections (a)(i) through (iv) of this section.

SEC. 3. *Reviewing Federal Government Use of UAS.* (a) Within 60 days of the date of this order [Jan. 18, 2021], the heads of all agencies shall each submit a report to the Director of National Intelligence and the Director of the Office of Science and Technology Policy describing the manufacturer, model, and any relevant security protocols for all UAS currently owned or operated by their respective agency, or controlled by their agency through a third party, such as a contractor, that are manufactured by foreign adversaries or have significant components that are manufactured by foreign adversaries.

(b) Within 180 days of the date of this order, the Director of National Intelligence, in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of the Office of Science and Technology Policy, and the heads of other agencies, as appropriate, shall review the reports required by subsection (a) of this section and submit a report to the President assessing the security risks posed by the existing Federal UAS fleet and outlining potential steps that could be taken to mitigate these risks, including, if warranted, discontinuing all Federal

use of covered UAS and the expeditious removal of UAS from Federal service.

SEC. 4. *Restricting Use of UAS On or Over Critical Infrastructure or Other Sensitive Sites.* Within 270 days of the date of this order, the Administrator of the Federal Aviation Administration (FAA) shall propose regulations pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016 (Public Law 114-190) [49 U.S.C. 44802 note].

SEC. 5. *Budget.* (a) The heads of all agencies shall consider the replacement of covered UAS to be a priority when developing budget proposals and planning for the use of funds.

(b) The Director of the Office of Management and Budget shall work with the heads of all agencies to identify possible sources of funding to replace covered UAS in the Federal fleet in future submissions of the President's Budget request.

SEC. 6. *Definitions.* For purposes of this order, the following definitions shall apply:

(a) The term "adversary country" means the Democratic People's Republic of Korea, the Islamic Republic of Iran, the People's Republic of China, the Russian Federation, or, as determined by the Secretary of Commerce, any other foreign nation, foreign area, or foreign non-government entity engaging in long-term patterns or serious instances of conduct significantly adverse to the national or economic security of the United States.

(b) The term "covered UAS" means any UAS that: (i) is manufactured, in whole or in part, by an entity domiciled in an adversary country;

(ii) uses critical electronic components installed in flight controllers, ground control system processors, radios, digital transmission devices, cameras, or gimbals manufactured, in whole or in part, in an adversary country;

(iii) uses operating software (including cell phone or tablet applications, but not cell phone or tablet operating systems) developed, in whole or in part, by an entity domiciled in an adversary country;

(iv) uses network connectivity or data storage located outside the United States, or administered by any entity domiciled in an adversary country; or

(v) contains hardware and software components used for transmitting photographs, videos, location information, flight paths, or any other data collected by the UAS manufactured by an entity domiciled in an adversary country.

(c) The term "critical electronic component" means any electronic device that stores, manipulates, or transfers digital data. The term critical electronic component does not include, for example, passive electronics such as resistors, and non-data transmitting motors, batteries, and wiring.

(d) The term "entity" means a partnership, association, trust, joint venture, corporation, government, group, subgroup, other organization, or person.

(e) The term "Intelligence Community" has the same meaning set forth for that term in section 3003(4) of title 50, United States Code.

(f) The term "National Airspace System" (NAS) means the common network of United States airspace; air navigation facilities, equipment, and services; airports or landing areas; aeronautical charts, information, and services; related rules, regulations, and procedures; technical information; and manpower and material. The term also includes system components shared jointly by the Departments of Defense, Transportation, and Homeland Security.

(g) The term "Unmanned Aircraft Systems" (UAS) means any unmanned aircraft, and the associated elements that are required for the pilot or system operator to operate safely and efficiently in the NAS, including communication links, the components that control the unmanned aircraft, and all critical electronic components. The term UAS does not include any separate communication device, such as a cellular phone or tablet, designed to perform independently of a UAS system, which may be incorporated into the operation of a UAS.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EX. ORD. NO. 14063. USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

Ex. Ord. No. 14063, Feb. 4, 2022, 87 F.R. 7363, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in the administration and completion of Federal construction projects, it is hereby ordered that:

SECTION 1. *Policy.* (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise because construction projects typically involve multiple employers at a single location, and a labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create friction and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On large-scale projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) Project labor agreements are often effective in preventing these problems from developing because they provide structure and stability to large-scale construction projects. Such agreements avoid labor-related disruptions on projects by using dispute-resolution processes to resolve worksite disputes and by prohibiting work stoppages, including strikes and lockouts. They secure the commitment of all stakeholders on a construction site that the project will proceed efficiently without unnecessary interruptions. They also advance the interests of project owners, contractors, and subcontractors, including small businesses. For these reasons, owners and contractors in both the public and private sector routinely use project labor agreements, thereby reducing uncertainties in large-scale construction projects. The use of project labor agreements is fully consistent with the promotion of small business interests.

(c) Accordingly, it is the policy of the Federal Government for agencies to use project labor agreements in connection with large-scale construction projects to promote economy and efficiency in Federal procurement.

SEC. 2. *Definitions.* For purposes of this order:

(a) "Labor organization" means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members, as described in 29 U.S.C. 158(f).

(b) "Construction" means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

(c) “Large-scale construction project” means a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is \$35 million or more. The Federal Acquisition Regulatory Council (FAR Council), in consultation with the Council of Economic Advisers, may adjust this threshold based on inflation using the process at 41 U.S.C. 1908.

(d) “Agency” means an executive department or agency, including an independent establishment subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A).

(e) “Project labor agreement” means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

SEC. 3. *Project Labor Agreement Presumption.* Subject to sections 5 and 6 of this order, in awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, agencies shall require every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

SEC. 4. *Requirements of Project Labor Agreements.* Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.

SEC. 5. *Exceptions Authorized by Agencies.* A senior official within an agency may grant an exception from the requirements of section 3 of this order for a particular contract by, no later than the solicitation date, providing a specific written explanation of why at least one of the following circumstances exists with respect to that contract:

(a) Requiring a project labor agreement on the project would not advance the Federal Government’s interests in achieving economy and efficiency in Federal procurement. Such a finding shall be based on the following factors:

(i) The project is of short duration and lacks operational complexity;

(ii) The project will involve only one craft or trade;

(iii) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;

(iv) The agency’s need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or

(v) The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.

(b) Based on an inclusive market analysis, requiring a project labor agreement on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.

(c) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

SEC. 6. *Reporting.* (a) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, agencies shall publish, on a centralized public website, data showing the use of project labor agreements on large-scale construction projects, as well as descriptions of the exceptions granted under section 5 of this order.

(b) On a quarterly basis, agencies shall report to the Office of Management and Budget (OMB) on their use of project labor agreements on large-scale construction projects and on the exceptions granted under section 5 of this order.

SEC. 7. Nothing in this order precludes an agency from requiring the use of a project labor agreement in circumstances not covered by this order, including projects where the total cost to the Federal Government is less than that for a large-scale construction project, or projects receiving any form of Federal financial assistance (including loans, loan guarantees, revolving funds, tax credits, tax credit bonds, and cooperative agreements). This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

SEC. 8. *Regulations and Implementation.* (a) Within 120 days of the date of this order [Feb. 4, 2022], the FAR Council, to the extent permitted by law, shall propose regulations implementing the provisions of this order. The FAR Council shall consider and evaluate public comments on the proposed regulations and shall promptly issue a final rule, to the extent permitted by law.

(b) The Director of OMB shall, to the extent permitted by law, issue guidance to implement the requirements of sections 5 and 6 of this order.

SEC. 9. *Contracting Officer Training.* Within 90 days of the date of this order, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall coordinate in designing a training strategy for agency contracting officers to enable those officers to effectively implement this order. Within 180 days of the date of the publication of proposed regulations, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall provide a report to the Assistant to the President for Economic Policy and Director of the National Economic Council on the contents of the training strategy.

SEC. 10. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13502 of February 6, 2009 (Use of Project Labor Agreements for Federal Construction Projects) [set out above], is revoked as of the effective date of the final regulations issued by the FAR Council under section 8(a) of this order. Upon Executive Order 13502’s revocation, the heads of agencies shall consider, to the extent permitted by law, revoking any orders, rules, or regulations implementing Executive Order 13502.

SEC. 11. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

SEC. 12. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the final regulations issued by the FAR Council under section 8(a) of this order. For solicitations issued between the date of this order and the effective date of the final regulations issued by the FAR Council under section 8(a) of this order, or solicitations that have already been issued and are outstanding as of the date of this order, agencies are strongly encouraged, to the extent permitted by law, to comply with this order.

SEC. 13. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.



(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

§ 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) REQUIRED WARRANTY.—

(1) CONTENT.—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) REMEDY FOR BREACH OR VIOLATION.—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) NONAPPLICATION.—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial products or commercial services.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3774; Pub. L. 115-232, div. A, title VIII, § 836(b)(16), Aug. 13, 2018, 132 Stat. 1864.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 3901: June 30, 1949, ch. 288, title III, § 304(a), 63 Stat. 395; Pub. L. 98-369, div. B, title VII, § 2714(a)(3)(A), (B), July 18, 1984, 98 Stat. 1184; Pub. L. 103-355, title IV, § 4103(c), title VIII, § 8204(b), Oct. 13, 1994, 108 Stat. 3341, 3396.

In subsection (b)(2), the words "in its discretion" are omitted as unnecessary.

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115-232 substituted "commercial products or commercial services" for "commercial items".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub.

L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 3902. Severable services contracts for periods crossing fiscal years

(a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.

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

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 3902: 41:253l. June 30, 1949, ch. 288, title III, § 303L, as added Pub. L. 103-355, title I, § 1073, Oct. 13, 1994, 108 Stat. 3271, as amended Pub. L. 104-106, title XLIII, § 4321(a)(1), Feb. 10, 1996, 110 Stat. 671.

Statutory Notes and Related Subsidiaries

SEVERABLE SERVICES AND MULTIYEAR CONTRACT AUTHORITY OF JUDICIAL ENTITIES

Pub. L. 113-76, div. E, title III, § 306, Jan. 17, 2014, 128 Stat. 203, provided that: "The Supreme Court of the United States, the Federal Judicial Center, and the United States Sentencing Commission are hereby authorized, now and hereafter, to enter into contracts for the acquisition of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into contracts for multiple years for the acquisition of property and services, to the same extent as executive agencies under the authority of 41 U.S.C. sections 3902 and 3903, respectively."

§ 3903. Multiyear contracts

(a) DEFINITION.—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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-