

§ 1124. Tests of innovative procurement methods and procedures

(a) IN GENERAL.—The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. In developing a program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

- (1) ascertain the need for and specify the objectives of the program;
- (2) develop the guidelines and procedures for carrying out the program and the criteria to be used in measuring the success of the program;
- (3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under the program;
- (4) select the appropriate executive agencies or components of executive agencies to carry out the program;
- (5) specify the categories and types of products or services to be procured under the program; and
- (6) develop the methods to be used to analyze the results of the program.

(b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out the program.

(c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines that it is necessary to waive the application of a provision of law to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and request that the Committees take the necessary action to provide that the provision of law does not apply with respect to the proposed program. The notification to Congress shall include—

- (1) a description of the proposed program (including the scope and purpose of the proposed program);
- (2) the procedures to be followed in carrying out the proposed program;
- (3) the provisions of law affected and the application of any provision of law that must be waived in order to carry out the proposed program; and
- (4) the executive agencies involved in carrying out the proposed program.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3688.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1124(a)	41:413(a) (1st, 2d sentences).	Pub. L. 93-400, §15, as added Pub. L. 98-191, §7, Dec. 1, 1983, 97 Stat. 1329; Pub. L. 104-201, title X, §1074(f)(2), Sept. 23, 1996, 110 Stat. 2661.
1124(b)	41:413(a) (last sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1124(c)	41:413(b).	

In subsection (c), the words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Operations” on authority of section 1(a)(6) of Public Law 104-14 (2 U.S.C. note prec. 21), Rule X(1)(h) of the Rules of the House of Representatives, adopted by House Resolution No. 5 (106th Congress, January 6, 1999), and Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007). The words “Committee on Homeland Security and Governmental Affairs” are substituted for “Committee on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004).

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. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§ 1125. Recipients of Federal grants or assistance

(a) AUTHORITY.—With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms that the Administrator considers appropriate and that executive agencies shall follow in providing for the procurement, to the extent required under those programs, of property or services referred to in section 1121(c)(1) of this title by recipients of Federal grants or assistance under the programs.

(b) LIMITATION.—Subsection (a) does not—

- (1) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to a recipient of a Federal grant or assistance; or
- (2) authorize action by a recipient contrary to State and local law in the case of a program to provide a Federal grant or assistance to a State or political subdivision.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3688.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1125(a)	41:405(i)(1).	Pub. L. 93-400, §6(i), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1328.
1125(b)	41:405(i)(2).	

§ 1126. Policy regarding consideration of contractor past performance

(a) GUIDANCE.—The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance

of offerors in awarding contracts. The guidance shall include—

(1) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

(2) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary;

(3) policies for ensuring that—

(A) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, other departments and agencies of the Federal Government, agencies of State and local governments, and commercial customers; and

(B) the information submitted by offerors is considered; and

(4) the period for which information on past performance of offerors may be maintained and considered.

(b) INFORMATION NOT AVAILABLE.—If there is no information on past contract performance of an offeror or the information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3689.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1126(a)	41:405(j)(1).	Pub. L. 93–400, §6(j), as added Pub. L. 103–355, title I, §1091(b)(2), Oct. 13, 1994, 108 Stat. 3272.
1126(b)	41:405(j)(2).	

Statutory Notes and Related Subsidiaries

INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR EXECUTIVE AGENCY SOURCE SELECTION DECISIONS

Pub. L. 112–239, div. A, title VIII, §853, Jan. 2, 2013, 126 Stat. 1856, provided that:

“(a) STRATEGY REQUIRED.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Federal Acquisition Regulatory Council shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used by executive agencies for making source selection decisions.

“(2) CONSULTATION WITH USDATL.—In developing the strategy required by this subsection, the Federal Acquisition Regulatory Council shall consult with the Under Secretary of Defense for Acquisition, Technology, and Logistics to ensure that the strategy is, to the extent practicable, consistent with the strategy developed by the Under Secretary pursuant to section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1487; 10 U.S.C. 2302 note).

“(b) ELEMENTS.—The strategy required by subsection (a) shall, at a minimum—

“(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

“(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

“(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

“(c) CONTRACTOR COMMENTS.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Federal Acquisition Regulation shall be revised to require the following:

“(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

“(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

“(3) That agency evaluations of contractor past performance, including any comments, rebuttals, or additional information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

“(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

“(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Jan. 2, 2013], the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the actions taken by the Federal Acquisition Regulatory Council pursuant to this section, including an assessment of the following:

“(1) The extent to which the strategy required by subsection (a) is consistent with the strategy developed by the Under Secretary of Defense for Acquisition, Technology, and Logistics as described in subsection (a)(2).

“(2) The extent to which the actions of the Federal Acquisition Regulatory Council pursuant to this section have otherwise achieved the objectives of this section.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

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

“(2) The term ‘executive agency’ has the meaning given that term in section 133 of title 41, United States Code, except that the term excludes the Department of Defense and the military departments.

“(3) The term ‘Federal Acquisition Regulatory Council’ means the Federal Acquisition Regulatory Council under section 1302(a) of title 41, United States Code.”

CONGRESSIONAL FINDINGS REGARDING CONSIDERATION OF PAST CONTRACT PERFORMANCE

Pub. L. 103–355, title I, §1091(b)(1), Oct. 13, 1994, 108 Stat. 3272, provided that: “Congress makes the following findings:

“(A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding a contract.

“(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official.”

§ 1127. Determining benchmark compensation amount

(a) DEFINITIONS.—In this section:

(1) BENCHMARK COMPENSATION AMOUNT.—The term “benchmark compensation amount”, for a fiscal year, is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (b) is made.

(2) BENCHMARK CORPORATION.—The term “benchmark corporation”, with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of \$50,000,000 for the fiscal year.

(3) COMPENSATION.—The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer’s cost accounting records for the fiscal year.

(4) FISCAL YEAR.—The term “fiscal year” means a fiscal year a contractor establishes for accounting purposes.

(5) PUBLICLY-OWNED UNITED STATES CORPORATION.—The term “publicly-owned United States corporation” means a corporation—

(A) organized under the laws of a State of the United States, the District of Columbia, Puerto Rico, or a possession of the United States; and

(B) whose voting stock is publicly traded.

(6) SENIOR EXECUTIVES.—The term “senior executives”, with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

(b) DETERMINING BENCHMARK COMPENSATION AMOUNT.—For purposes of section 4304(a)(16) of this title and section 3744(a)(16) of title 10, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection, the Administrator shall consult with the Director of the Defense Contract Audit Agency and other officials of executive agencies as the Administrator considers appropriate.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3689; Pub. L. 117-81, div. A, title XVII, § 1702(h)(1), Dec. 27, 2021, 135 Stat. 2158.)

REPEAL OF SECTION

Pub. L. 113-67, div. A, title VII, § 702(b)(1), (c), Dec. 26, 2013, 127 Stat. 1189, repealed this section applicable only with respect to costs of

compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013.

Pub. L. 113-66, div. A, title VIII, § 811(c)(1), (d), Dec. 26, 2013, 127 Stat. 806, repealed this section applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1127(a)(1)	41:435(b).	Pub. L. 93-400, § 39, as added Pub. L. 105-85, title VIII, § 808(c)(1), Nov. 18, 1997, 111 Stat. 1837; Pub. L. 105-261, title VIII, § 804(c)(1), Oct. 17, 1998, 112 Stat. 2083.
1127(a)(2)	41:435(c)(3).	
1127(a)(3)	41:435(c)(1).	
1127(a)(4)	41:435(c)(5).	
1127(a)(5)	41:435(c)(4).	
1127(a)(6)	41:435(c)(2).	
1127(b)	41:435(a).	

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 117-81 substituted “section 3744(a)(16)” for “section 2324(e)(1)(P)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 113-67 applicable only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 702(c) of Pub. L. 113-67, set out as an Effective Date of 2013 Amendment note under section 4304 of this title.

Repeal by Pub. L. 113-66 applicable with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after Dec. 26, 2013, see section 811(d) of Pub. L. 113-66, set out as an Effective Date of 2013 Amendment note under section 4304 of this title.

EXCLUSIVE APPLICABILITY OF PROVISIONS LIMITING ALLOWABILITY OF COMPENSATION FOR CERTAIN CONTRACTOR PERSONNEL

Pub. L. 105-85, div. A, title VIII, § 808(f), Nov. 18, 1997, 111 Stat. 1838, provided that: “Notwithstanding any other provision of law, no other limitation in law on the allowability of costs of compensation of senior executives under covered contracts shall apply to such costs of compensation incurred after January 1, 1998.”

DEFINITIONS FOR PURPOSES OF SECTION 808 OF PUB. L. 105-85

Pub. L. 105-85, div. A, title VIII, § 808(g), Nov. 18, 1997, 111 Stat. 1838, as amended by Pub. L. 105-261, div. A, title VIII, § 804(c)(2), Oct. 17, 1998, 112 Stat. 2083, provided that: “In this section [see Tables for classification]:

“(1) The term ‘covered contract’ has the meaning given such term in section 2324(l) of title 10, United States Code [see 10 U.S.C. 3741], and section 306(l) of the Federal Property and Administrative Services Act of 1949 (former) 41 U.S.C. 256(l) [see 41 U.S.C. 4301].

“(2) The terms ‘compensation’ and ‘senior executives’ have the meanings given such terms in section 2324(l) of title 10, United States Code [see 10 U.S.C. 3741] as to ‘compensation’ and former 10 U.S.C. 2324(l)(5) as to ‘senior executives’, and section 306(m) of the Federal Property and Administrative Services Act of 1949 [see 41 U.S.C. 4301].”