

term is defined in section 3016 of title 10)'' for ''chapters 4 and 137 of title 10''.

§ 1304. Contract clauses and certifications

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

- (1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and
- (2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

- (A) the certification requirement is specifically imposed by statute; or
- (B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term ''head of the executive agency'' with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

- (i) the certification requirement is specifically imposed by statute; or
- (ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3693.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|--|--------------------------|---|
| 1304(a) | 41:425(a). | Pub. L. 93–400, §29, as added Pub. L. 103–355, title I, §1093, Oct. 13, 1994, 108 Stat. 3273; Pub. L. 104–106, title XLIII, §4301(b)(2)(A), (c), Feb. 10, 1996, 110 Stat. 657, 658. |
| 1304(b)(1) 1304(b)(2), (3). | 41:425(b). 41:425(c). | |

Statutory Notes and Related Subsidiaries

CURRENT CERTIFICATION REQUIREMENTS

Pub. L. 104–106, div. D, title XLIII, §4301(b)(1), Feb. 10, 1996, 110 Stat. 656, provided that:

“(A) Not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996], the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

“(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

“(ii) the Administrator approves in writing the retention of the certification requirement.

“(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

“(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

“(II) the head of the executive agency approves in writing the retention of such certification requirement.

“(ii) For purposes of clause (i), the term ‘head of the executive agency’ with respect to a military department means the Secretary of Defense.”

Executive Documents

ADDRESSING TAX DELINQUENCY BY GOVERNMENT CONTRACTORS

Memorandum of President of the United States, Jan. 20, 2010, 75 F.R. 3979, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than \$5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to direct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Acquisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors’ certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treas-

ury and other agency heads, to evaluate practices of contracting officers and debarring officials in response to contractors' certifications of serious tax delinquencies and to provide me, within 90 days, recommendations on process improvements to ensure these contractors are not awarded new contracts, including a plan to make contractor certifications available in a Government-wide database, as is already being done with other information on contractors.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum 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.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

§ 1311. Establishment and membership

(a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisition Officers Council.

(b) MEMBERSHIP.—The members of the Council are—

- (1) the Deputy Director for Management of the Office of Management and Budget;
- (2) the Administrator;
- (3) the Under Secretary of Defense for Acquisition and Sustainment;
- (4) the chief acquisition officer of each executive agency that is required to have a chief acquisition officer under section 1702 of this title and the senior procurement executive of each military department; and
- (5) any other senior agency officer of each executive agency, appointed by the head of the agency in consultation with the Chairman of the Council, who can effectively assist the Council in performing the functions set forth in section 1312(b) of this title and supporting the associated range of acquisition activities.

(c) LEADERSHIP AND SUPPORT.—

(1) CHAIRMAN.—The Deputy Director for Management of the Office of Management and Budget is the Chairman of the Council.

(2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be selected by the Council from among its members. The Vice Chairman serves for one year and may serve multiple terms.

(3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the Council on behalf of the Deputy Director for Management.

(4) SUPPORT.—The Administrator of General Services shall provide administrative and other support for the Council.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3694; Pub. L. 116–92, div. A, title IX, §902(89), Dec. 20, 2019, 133 Stat. 1554.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 1311(a) | 41:414b(a). | Pub. L. 93–400, §16A(a)–(c), as added Pub. L. 108–136, title XIV, §1422(a), Nov. 24, 2003, 117 Stat. 1668. |

HISTORICAL AND REVISION NOTES—CONTINUED

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|----------------------------|
| 1311(b) | 41:414b(b)(1) (words before comma), (2)–(5). | |
| 1311(c)(1) | 41:414b(b)(1) (words after comma). | |
| 1311(c)(2) | 41:414b(c)(2). | |
| 1311(c)(3) | 41:414b(c)(1). | |
| 1311(c)(4) | 41:414b(c)(3). | |

Editorial Notes

AMENDMENTS

2019—Subsec. (b)(3). Pub. L. 116–92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

§ 1312. Functions

(a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the principal interagency forum for monitoring and improving the Federal acquisition system.

(b) FUNCTIONS.—The Council shall perform functions that include the following:

- (1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.
- (2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.
- (3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.
- (4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.
- (5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.
- (6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.
- (7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3694.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 1312(a) | 41:414b(d). | Pub. L. 93–400, §16A(d), (e), as added Pub. L. 108–136, title XIV, §1422(a), Nov. 24, 2003, 117 Stat. 1668. |
| 1312(b) | 41:414b(e). | |

SUBCHAPTER III—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

§ 1321. Definitions

In this subchapter:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term “appropriate congressional committees and leadership” means—