

In subsection (e)(1)(B)(i), the words “required for a bid or proposal for a contract described in” are substituted for “required by” for clarity.

In subsection (e)(1)(B)(ii), the words “required for an order described in” are substituted for “required by” for clarity.

**Editorial Notes**

AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 117-81 substituted “section 3204(a)” for “section 2304(c)”.

2018—Subsecs. (c)(6), (e)(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.

APPLICABILITY TO TENNESSEE VALLEY AUTHORITY

Pub. L. 98-577, title III, §303(c), Oct. 30, 1984, 98 Stat. 3079, provided that: “The provisions of the amendments made by subsection (a) of this section [see Tables for classification] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.”

**§ 1709. Contracting functions performed by Federal personnel**

(a) COVERED PERSONNEL.—Personnel referred to in subsection (b) are—

- (1) an employee, as defined in section 2105 of title 5;
- (2) a member of the armed forces; and
- (3) an individual assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

(b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—No individual who is not an individual described in subsection (a) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (a) with adequate training and capabilities to perform the evaluations and analyses are not readily available in the agency or another Federal agency. When administering this subsection, the head of each executive agency shall determine in accordance with standards and procedures prescribed in the Federal Acquisition Regulation whether—

- (1) a sufficient number of personnel described in subsection (a) in the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and
- (2) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

(c) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not affect the relationship between the Federal Government and a Federally funded research and development center.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3714.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1709(a) .....	41:419(b).	Pub. L. 93-400, §23, as added Pub. L. 103-355, title VI, §6002(a), Oct. 13, 1994, 108 Stat. 3363.
1709(b) .....	41:419(a).	
1709(c) .....	41:419(c).	

In subsection (a), before paragraph (1), the words “Personnel referred to in subsection (b) are” are substituted for “For purposes of subsection (a) of this section, the personnel described in this subsection are as follows” to eliminate unnecessary words. In paragraph (3), the words “employee from State or local governments” are substituted for “person” for clarity.

SENATE REVISION AMENDMENT

In subsec. (a)(3), “individual” substituted for “employee from State or local governments” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

**Statutory Notes and Related Subsidiaries**

REQUIREMENT FOR GUIDANCE AND REGULATIONS

Pub. L. 103-355, title VI, §6002(b), Oct. 13, 1994, 108 Stat. 3363, provided that: “The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall—

- “(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and
- “(2) provide guidance and promulgate regulations regarding—
  - “(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and
  - “(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.”

**§ 1710. Public-private competition required before conversion to contractor performance**

(a) PUBLIC-PRIVATE COMPETITION.—

(1) WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS ALLOWED.—A function of an executive agency performed by 10 or more agency civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

- (A) formally compares the cost of performance of the function by agency civilian employees with the cost of performance by a contractor;
- (B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A76, as implemented on May 29, 2003, or any successor circular;
- (C) includes the issuance of a solicitation;
- (D) determines whether the submitted offers meet the needs of the executive agency with respect to factors other than cost, including quality, reliability, and timeliness;
- (E) examines the cost of performance of the function by agency civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Federal