

## (4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

(A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) DEPARTMENT OF HOMELAND SECURITY.—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) ANNUAL REPORT.—The annual report of the head of an executive agency that is required under section 2371(h)<sup>1</sup> of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) TERMINATION OF AUTHORITY.—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3721.)

## HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)  |
|-----------------|--------------------|---|
| 1904 .....      | 41:428a note.      | Pub. L. 108–136, title XIV, §1441, Nov. 24, 2003, 117 Stat. 1673. |

In subsection (a)(2), the reference to subsection (g) of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note) is changed to subsection (i) because of section 847(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, 117 Stat. 1554), which redesignated subsection (g) as subsection (h), and section 823(2) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163, 119 Stat. 3387), which redesignated subsection (h) as subsection (i).

In subsection (a)(3)(A), the words “paragraph (2)” are substituted for “this paragraph” to correct the cross-reference.

In subsection (a)(4)(A), the words “to use the authority for such project” are omitted as unnecessary.

In subsection (c), 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). The words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Reform” on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

## Editorial Notes

## REFERENCES IN TEXT

Section 2371 of title 10, referred to in subsec. (a)(1), was renumbered section 4021 of title 10 by Pub. L. 116–283, §1841(b)(1), as amended by Pub. L. 117–81, div. A, title XVII, §1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C.

2371 note), referred to in subsec. (a)(2), was repealed by Pub. L. 114–92, div. A, title VIII, §815(c), Nov. 25, 2015, 129 Stat. 896.

Section 2371(h) of title 10, referred to in subsec. (c), was repealed by Pub. L. 113–291, div. A, title X, §1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.

## 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.

## § 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and

the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3722.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>  |
|------------------------|---------------------------|--|
| 1905(a) .....          | no source.                |  |
| 1905(b)-(d) ..         | 41:429.                   | Pub. L. 93-400, §33, as added Pub. L. 103-355, title IV, §4101, Oct. 13, 1994, 108 Stat. 3339. |

**§ 1906. List of laws inapplicable to procurements of commercial products and commercial services**

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial products or commercial services. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial products or commercial services by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial products or commercial services.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial products or commercial services from the applicability of the provision.

(c) SUBCONTRACTS.—

(1) DEFINITION.—In this subsection, the term “subcontract” includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Federal Government and other parties and are not identifiable to any particular contract.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under a contract or subcontract for the procurement of commercial products or commercial services. A provision of law properly included on the list pursuant to paragraph (3) does not apply to those subcontracts. This section does not

render a provision of law not included on the list inapplicable to subcontracts under a contract for the procurement of commercial products or commercial services.

(3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law described in subsection (d) shall be included on the list of inapplicable provisions of law required by paragraph (2) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt subcontracts under a contract for the procurement of commercial products or commercial services from the applicability of the provision.

(4) WAIVER NOT AUTHORIZED.—This subsection does not authorize the waiver of the applicability of any provision of law with respect to any subcontract under a contract with a prime contractor reselling or distributing commercial products or commercial services of another contractor without adding value.

(d) COVERED LAW.—A provision of law referred to in subsections (b)(2) and (c) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial products or commercial services.

(e) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (d) is not included on the list of inapplicable provisions of law as required by subsection (b) or (c) and the Council has not made a written determination pursuant to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3723; Pub. L. 115-91, div. A, title VIII, §820, Dec. 12, 2017, 131 Stat. 1464; Pub. L. 115-232, div. A, title VIII, §836(b)(6)(A), (B)(i), Aug. 13, 2018, 132 Stat. 1861.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>   |
|------------------------|---------------------------|---|
| 1906(a) .....          | no source.                |   |
| 1906(b)-(e) ..         | 41:430.                   | Pub. L. 93-400, §34, as added Pub. L. 103-355, title VIII, §8003(a), Oct. 13, 1994, 108 Stat. 3388. |

**Editorial Notes**

AMENDMENTS

2018—Pub. L. 115-232, §836(b)(6)(B)(i), substituted “List of laws inapplicable to procurements of commercial products and commercial services” for “List of laws inapplicable to procurements of commercial items” in section catchline.