

Editorial Notes

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-328 added subsec. (f).

Executive DocumentsSTREAMLINING PROCUREMENT THROUGH ELECTRONIC
COMMERCE

Memorandum of President of the United States, Oct. 28, 1993, 58 F.R. 58095, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

The Federal Government spends \$200 billion annually buying goods and services. Unfortunately, the red tape and burdensome paperwork of the current procurement system increases costs, produces unnecessary delays, and reduces Federal work force productivity. Moving to an electronic commerce system to simplify and streamline the purchasing process will promote customer service and cost-effectiveness. The electronic exchange of acquisition information between the private sector and the Federal Government also will increase competition by improving access to Federal contracting opportunities for the more than 300,000 vendors currently doing business with the Government, particularly small businesses, as well as many other vendors who find access to bidding opportunities difficult under the current system. For these reasons, I am committed to fundamentally altering and improving the way the Federal Government buys goods and services by ensuring that electronic commerce is implemented for appropriate Federal purchases as quickly as possible.

1. OBJECTIVES.

The objectives of this electronic commerce initiative are to:

(a) exchange procurement information—such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents—electronically between the private sector and the Federal Government to the maximum extent practical;

(b) provide businesses, including small, small disadvantaged, and women-owned businesses, with greater access to Federal procurement opportunities;

(c) ensure that potential suppliers are provided simplified access to the Federal Government's electronic commerce system;

(d) employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data; and

(e) use agency and industry systems and networks to enable the Government and potential suppliers to exchange information and access Federal procurement data.

2. IMPLEMENTATION.

The President's Management Council, in coordination with the Office of Federal Procurement Policy of the Office of Management and Budget, and in consultation with appropriate Federal agencies with applicable technical and functional expertise, as necessary, shall provide overall leadership, management oversight, and policy direction to implement electronic commerce in the executive branch through the following actions:

(a) by March 1994, define the architecture for the Government-wide electronic commerce acquisition system and identify executive departments or agencies responsible for developing, implementing, operating, and maintaining the Federal electronic system;

(b) by September 1994, establish an initial electronic commerce capability to enable the Federal Government and private vendors to electronically exchange standardized requests for quotations, quotes, purchase orders, and notice of awards and begin Government-wide implementation;

(c) by July 1995, implement a full scale Federal electronic commerce system that expands initial capabilities to include electronic payments, document interchange, and supporting databases; and

(d) by January 1997, complete Government-wide implementation of electronic commerce for appropriate Federal purchases, to the maximum extent possible.

This implementation schedule should be accelerated where practicable.

The head of each executive department or agency shall:

(a) ensure that budgetary resources are available, within approved budget levels, for electronic commerce implementation in each respective department or agency;

(b) assist the President's Management Council in implementing the electronic commerce system as quickly as possible in accordance with the schedules established herein; and

(c) designate one or more senior level employees to assist the President's Management Council and serve as a point of contact for the development and implementation of the Federal electronic commerce system within each respective department or agency.

3. NO PRIVATE RIGHTS CREATED.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

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

WILLIAM J. CLINTON.

§ 2302. Rights in technical data

(a) WHERE DEFINED.—The legitimate proprietary interest of the Federal Government and of a contractor in technical or other data shall be defined in regulations prescribed as part of the Federal Acquisition Regulation.

(b) GENERAL EXTENT OF REGULATIONS.—

(1) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under subsection (a) may not impair a right of the Federal Government or of a contractor with respect to a patent or copyright or another right in technical data otherwise established by law.

(2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOVERNMENT.—With respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that the Federal Government may not require a person that has developed a product (or process offered or to be offered for sale to the public) to provide to the Federal Government technical data relating to the design (or development or manufacture of the product or process) as a condition of procurement by the Federal Government of the product or process. This paragraph does not apply to data that may be necessary for the Federal Government to operate and maintain the product or use the process if the Federal Government obtains it as an element of performance under the contract.

(c) TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.—

(1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise expressly provided by Federal statute, with respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that—

(A) the Federal Government has unlimited rights in technical data developed exclusively with Federal funds if delivery of the data—

(i) was required as an element of performance under a contract; and

(ii) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future; and

(B) the Federal Government and each agency of the Federal Government has an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Federal Government) technical data developed exclusively with Federal funds.

(2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOVERNMENT.—The requirements of paragraph (1) are in addition to and not in lieu of any other rights the Federal Government may have pursuant to law.

(d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The following factors shall be considered in prescribing regulations under subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

- (A) exclusively with Federal funds;
- (B) exclusively at private expense; or
- (C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219, 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the Federal Government in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(e) PROVISIONS REQUIRED IN CONTRACTS.—Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

- (1) defining the respective rights of the Federal Government and the contractor or subcontractor (at any tier) regarding technical data to be delivered under the contract;
- (2) specifying technical data to be delivered under the contract and schedules for delivery;
- (3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;
- (4) establishing separate contract line items for technical data to be delivered under the contract;
- (5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the Federal Government to use the data;
- (6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver the revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise another remedy the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3733.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2302(a)	41:418a(a) (1st sentence).	Pub. L. 93-400, §21, as added Pub. L. 98-577, title III, §301(a), Oct. 30, 1984, 98 Stat. 3074; Pub. L. 99-145, title IX, §961(d)(2), Nov. 8, 1985, 99 Stat. 704.
2302(b)	41:418a(a) (2d, last sentences).	
2302(c)	41:418a(b).	
2302(d)	41:418a(c).	
2302(e)	41:418a(d).	

In subsection (a), the words “Federal Acquisition Regulation” are substituted for “single system of Government-wide procurement regulations as defined in section 403(4) of this title” because section 3(a)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679, 102 Stat. 4055) substituted “Federal Acquisition Regulation” for “single system of Government-wide procurement regulations” in section 6 of the Office of Federal Procurement Policy Act (Public Law 93-400, 88 Stat. 797, 41:406) and because section 3(c) of the Office of Federal Procurement Policy Act Amendments of 1988 (102 Stat. 4056) struck section 4(4) of the Office of Federal Procurement Policy Act (88 Stat. 797, 41:403(4)), as amended by section 4 of the Office of Federal Procurement Policy Act Amendments of 1983 (Public Law 98-191, 97 Stat. 1326), which had defined “single system of Government-wide procurement regulations”.

§2303. Ethics safeguards related to contractor conflicts of interest

(a) DEFINITION.—In this section, the term “relevant acquisition function” means an acquisition function closely associated with inherently governmental functions.

(b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.—

(1) DEVELOPMENT AND ISSUANCE OF POLICY.—The Administrator shall develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) ELEMENTS OF POLICY.—The policy shall—
 (A) define “personal conflict of interest” as it relates to contractor employees performing relevant acquisition functions; and