

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2308	41:434.	Pub. L. 93-400, § 38, formerly § 35, as added Pub. L. 104-106, title LII, § 5202(a), Feb. 10, 1996, 110 Stat. 690; renumbered § 38, Pub. L. 104-201, title X, § 1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.

§ 2309. Protection of constitutional rights of contractors

(a) PROHIBITION ON REQUIRING WAIVER OF RIGHTS.—A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive a right under the Constitution for a purpose relating to the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in section 3 of that Act (22 U.S.C. 6701)).

(b) PERMISSIBLE CONTRACT CLAUSES.—Subsection (a) does not prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections to ensure that the contractor is performing the contract in accordance with the provisions of the contract.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3738.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2309	41:436.	Pub. L. 93-400, § 40, formerly § 39, as added Pub. L. 105-277, title III, § 308(a), Oct. 21, 1998, 112 Stat. 2681-879; renumbered § 40, Pub. L. 108-136, title XIV, § 1431(d)(2), Nov. 24, 2003, 117 Stat. 1672.

In subsection (a), the reference is to the Chemical Weapons Convention Implementation Act of 1998 rather than the Chemical Weapons Convention Implementation Act of 1997 to correct an error in the source provision.

Editorial Notes

REFERENCES IN TEXT

The Chemical Weapons Convention Implementation Act of 1998, referred to in subsec. (a), is Pub. L. 105-277, div. I, Oct. 21, 1998, 112 Stat. 2681-856, which is classified principally to chapter 75 (§ 6701 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 6701 of Title 22 and Tables.

§ 2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items

(a) CRITERIA.—A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

- (1) the value of the contract or task order is estimated not to exceed \$25,000,000;
- (2) the contract or task order sets forth specifically each task to be performed and, for each task—

(A) defines the task in measurable, mission-related terms;

(B) identifies the specific end products or output to be achieved; and

(C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) REGULATIONS.—Regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) REPORT.—Not later than 2 years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Homeland Security and Governmental Affairs and on Armed Services of the Senate and the Committees on Oversight and Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of the authority, both government-wide and for each department and agency.

(d) EXPIRATION.—The authority under this section expires 10 years after November 24, 2003.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3738.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2310	41:437.	Pub. L. 93-400, § 41, as added Pub. L. 108-136, title XIV, § 1431(a), Nov. 24, 2003, 117 Stat. 1671.

In subsection (c), the words “Committees on Homeland Security and Governmental Affairs” are substituted for “Committees on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words “Committees on Oversight and Government Reform” are substituted for “Committees 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).

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.

§ 2311. Enhanced transparency on interagency contracting and other transactions

The Director of the Office of Management and Budget shall direct appropriate revisions to the