

ficer or official of that agency any power under this division.

(b) PROCUREMENTS FOR OR WITH ANOTHER AGENCY.—Subject to subsection (a), to facilitate the procurement of property and services covered by this division by an executive agency for another executive agency, and to facilitate joint procurement by executive agencies—

(1) the head of an executive agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within the agency;

(2) the heads of 2 or more executive agencies, consistent with section 1535 of title 31 and regulations prescribed under section 1074 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 31 U.S.C. 1535 note), may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

(3) the heads of 2 or more executive agencies may establish joint or combined offices to exercise procurement functions and responsibilities.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3743.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 3102: Revised Section 3102, Source 41:261, Source June 30, 1949, ch. 288, title III, §311, as added Pub. L. 103-355, title I, §1552, Oct. 13, 1994, 108 Stat. 3299.

§ 3103. Acquisition programs

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost, performance, and schedule goals established for major acquisition programs of the agency.

(b) ESTABLISHMENT OF GOALS.—

(1) BY HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

(2) BY CHIEF FINANCIAL OFFICER.—The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major acquisition program of the agency.

(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—When it is necessary to implement the policy set out in subsection (a), the head of an executive agency shall—

(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

(2) identify suitable actions to be taken, including termination, with respect to those programs.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3743.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 3103: Revised Section 3103, Source 41:263, Source June 30, 1949, ch. 288, title III, §313, as added Pub. L. 103-355, title V, §5051(a), Oct. 13, 1994, 108 Stat. 3351; Pub. L. 105-85, div. A, title VIII, §851(a), Nov. 18, 1997, 111 Stat. 1851.

§ 3104. Small business concerns

It is the policy of Congress that a fair proportion of the total purchases and contracts for property and services for the Federal Government shall be placed with small business concerns.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3744.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 3104: Revised Section 3104, Source 41:252(b), Source June 30, 1949, ch. 288, title III, §302(b), 63 Stat. 393; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 98-369, div. B, title VII, §2714(a)(1)(A), July 18, 1984, 98 Stat. 1184.

The word “declared” is omitted as unnecessary.

§ 3105. New contracts and grants and merit-based selection procedures

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

(1) an executive agency should not be required by legislation to award—

(A) a new contract to a specific non-Federal Government entity; or

(B) a new grant for research, development, test, or evaluation to a non-Federal Government entity; and

(2) a program, project, or technology identified in legislation be procured or awarded through merit-based selection procedures.

(b) NEW CONTRACT AND NEW GRANT DESCRIBED.—For purposes of this section—

(1) a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a prior contract; and

(2) a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a prior grant.

(c) REQUIREMENTS FOR AWARDED NEW CONTRACT OR NEW GRANT.—A provision of law may not be construed as requiring a new contract or a new grant to be awarded to a specified non-Federal Government entity unless the provision of law specifically—

(1) refers to this section;

(2) identifies the particular non-Federal Government entity involved; and

(3) states that the award to that entity is required by the provision of law in contravention of the policy set forth in subsection (a).

(d) EXCEPTION.—This section does not apply to a contract or grant that calls on the National Academy of Sciences to investigate, examine, or

experiment on a subject of science or art of significance to an executive agency and to report on those matters to Congress or an agency of the Federal Government.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3744.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3105(a) .....	41:253(i)(1).  41:266(a).	June 30, 1949, ch. 288, title III, §303(i), as added Pub. L. 103-355, title VII, §7203(b)(1)(B), Oct. 13, 1994, 108 Stat. 3380; Pub. L. 104-106, title XLI, §4101(b)(1), Feb. 10, 1996, 110 Stat. 642. June 30, 1949, ch. 288, title III, §316, as added Pub. L. 103-355, title VII, §7203(b)(2), Oct. 13, 1994, 108 Stat. 3381; Pub. L. 104-106, title XLIII, §4321(e)(9), Feb. 10, 1996, 110 Stat. 675.
3105(b) .....	41:253(i)(3). 41:266(c).	
3105(c) .....	41:253(i)(2). 41:266(b).	
3105(d) .....	41:253(i)(4). 41:266(d).	

**§ 3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division**

This division does not—

(1) authorize the erection, repair, or furnishing of a public building or public improvement; or

(2) permit a contract for the construction or repair of a building, road, sidewalk, sewer, main, or similar item using procedures other than sealed-bid procedures under section 3301(b)(1)(A) of this title if the conditions set forth in section 3301(b)(1)(A) of this title apply or the contract is to be performed outside the United States.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3745.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3106 .....	41:252(c)(1).	June 30, 1949, ch. 288, title III, §302(c)(1), 63 Stat. 393; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 85-800, §2, 3, Aug. 28, 1958, 72 Stat. 966; Pub. L. 89-343, §2, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 89-348, §1(2), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 90-268, §4, Mar. 16, 1968, 82 Stat. 50; Pub. L. 93-356, §3, July 25, 1974, 88 Stat. 390; Pub. L. 98-191, §9(a)(1), Dec. 1, 1983, 97 Stat. 1331; Pub. L. 98-369, div. B, title VII, §2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.

In paragraph (1), the words “but such authorization shall be required in the same manner as heretofore” are omitted as unnecessary.

**CHAPTER 33—PLANNING AND SOLICITATION**

Sec.  
3301. Full and open competition.  
3302. Requirements for purchase of property and services pursuant to multiple award contracts.

Sec.  
3303. Exclusion of particular source or restriction of solicitation to small business concerns.  
3304. Use of noncompetitive procedures.  
3305. Simplified procedures for small purchases.  
3306. Planning and solicitation requirements.  
3307. Preference for commercial products and commercial services.  
3308. Planning for future competition in contracts for major systems.  
3309. Design-build selection procedures.  
3310. Quantities to order.  
3311. Qualification requirement.  
3312. Database on price trends of items and services under Federal contracts.

**Editorial Notes**

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §836(b)(10)(B)(ii), Aug. 13, 2018, 132 Stat. 1863, substituted “Preference for commercial products and commercial services” for “Preference for commercial items” in item 3307.

2013—Pub. L. 112-239, div. A, title VIII, §851(a)(2), Jan. 2, 2013, 126 Stat. 1855, added item 3312.

**§ 3301. Full and open competition**

(a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and 3305 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services shall—

(1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and

(2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) APPROPRIATE COMPETITIVE PROCEDURES.—

(1) USE OF SEALED BIDS.—In determining the competitive procedures appropriate under the circumstance, an executive agency shall—

(A) solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A).

(2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not require the use of sealed-bid procedures in cases in which section 204(e)<sup>1</sup> of title 23 applies.

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government’s requirements.

<sup>1</sup> See References in Text note below.