

“(1) IN GENERAL.—There is authorized to be appropriated \$3,000,000 for each of fiscal years 2023 through 2033 for the Office of Management and Budget to support the activities of the Federal Acquisition Security Council.

“(2) TRANSFER AUTHORITY.—The Director of the Office of Management and Budget may transfer funds authorized to be appropriated under paragraph (1) to other Federal agencies for the performance of work for which the funds were authorized.”

§ 4714. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an executive agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require, as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally, or through written form, request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before the contractor extends a conditional offer to the applicant.

(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) EXCEPTION FOR CERTAIN POSITIONS.—

(A) IN GENERAL.—The prohibition under paragraph (1) does not apply with respect to—

(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

(ii) a position that the Administrator of General Services identifies under the regulations issued under subparagraph (B).

(B) REGULATIONS.—

(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Administrator of General Services, in consultation with the Secretary of Defense, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

(ii) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under clause (i) shall—

(I) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(b) COMPLAINT PROCEDURES.—The Administrator of General Services shall establish and publish procedures under which an applicant for a position with a Federal contractor may submit to the Administrator a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

(c) ACTION FOR VIOLATIONS OF PROHIBITION ON CRIMINAL HISTORY INQUIRIES.—

(1) FIRST VIOLATION.—If the head of an executive agency determines that a contractor has violated subsection (a)(1)(B), such head shall—

(A) notify the contractor;

(B) provide 30 days after such notification for the contractor to appeal the determination; and

(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

(2) SUBSEQUENT VIOLATION.—If the head of an executive agency determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), such head shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor's history of violations, including—

(A) providing written guidance to the contractor that the contractor's eligibility for contracts requires compliance with this section;

(B) requiring that the contractor respond within 30 days affirming that the contractor is taking steps to comply with this section; and

(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

(d) DEFINITIONS.—In this section:

(1) CONDITIONAL OFFER.—The term “conditional offer” means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

(2) CRIMINAL HISTORY RECORD INFORMATION.—The term “criminal history record information” has the meaning given that term in section 9201 of title 5.

(Added Pub. L. 116-92, div. A, title XI, § 1123(a)(1), Dec. 20, 2019, 133 Stat. 1610.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Fair Chance to Compete for Jobs Act of 2019, referred to in subsec. (a)(3)(B)(i), is the date of enactment of subtitle B (§§ 1121-1124) of title XI of div. A of Pub. L. 116-92, which was approved Dec. 20, 2019.

The Civil Rights Act of 1964, referred to in subsec. (a)(3)(B)(ii)(I), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241.

Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-92, div. A, title XI, §1123(a)(3), Dec. 20, 2019, 133 Stat. 1612, provided that: "Section 4714 of title 41, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded pursuant to solicitations issued after the effective date described in section 1122(b)(2) of this subtitle [effective 2 years after Dec. 20, 2019, see section 1122(b)(2) of Pub. L. 116-92, div. A, title XI, subtitle B, set out as a note under section 9202 of Title 5, Government Organization and Employees]."

Subtitle II—Other Advertising and Contract Provisions

Chapter 61. Advertising 6101
63. General Contract Provisions 6301
65. Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000 6501
67. Service Contract Labor Standards 6701

CHAPTER 61—ADVERTISING

Sec. 6101. Advertising requirement for Federal Government purchases and sales.
6102. Exceptions from advertising requirement.
6103. Opening of bids.

§ 6101. Advertising requirement for Federal Government purchases and sales

(a) DEFINITIONS.—In this section—

(1) APPROPRIATION.—The term "appropriation" includes amounts made available by legislation under section 9104 of title 31.

(2) FEDERAL GOVERNMENT.—The term "Federal Government" includes the government of the District of Columbia.

(b) PURCHASES.—

(1) IN GENERAL.—Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Federal Government may be made or entered into only after advertising for proposals for a sufficient time.

(2) LIMITATIONS ON APPLICABILITY.—Paragraph (1) does not apply when—

(A) the amount involved in any one case does not exceed \$25,000;

(B) public exigencies require the immediate delivery of articles or performance of services;

(C) only one source of supply is available and the Federal Government purchasing or contracting officer so certifies; or

(D) services are required to be performed by a contractor in person and are—

(i) of a technical and professional nature; or

(ii) under Federal Government supervision and paid for on a time basis.

(c) SALES.—Except when otherwise authorized by law or when the reasonable value involved in

any one case does not exceed \$500, sales and contracts of sale by the Federal Government are governed by the requirements of this section for advertising.

(d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—For wholly owned Government corporations, this section applies only to administrative transactions.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3801.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows include 6101(a) and 6101(b)-(d) with their respective historical sources.

In subsection (a), before paragraph (1), the words "In this section" are substituted for "as used in this Act" as the probable intent of Congress. Section 9(a) of the Act of August 2, 1946 (ch. 744, 60 Stat. 809) restated 41:5 generally and section 9(c) of the Act, an independent provision, was editorially added as the last paragraph of 41:5. The definitions which apply to "as used in this Act" are probably intended to apply also to 41:5 as restated by the Act. The definitions for "department" and "continental United States" are omitted because those terms do not appear in 41:5. In paragraph (1), the words "section 9104 of title 31" are substituted for "section 104 of the Government Corporation Control Act, approved December 6, 1945" because of section 4(b) of Public Law. 97-258 (31 U.S.C. note prec. 101). In paragraphs (1) and (2), the word "includes" is substituted for "shall be construed to include" and for "shall be construed as including", respectively, to eliminate unnecessary words.

In subsection (c), the words "as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638)" in section 3709 of the Revised Statutes are omitted because section 29 was repealed by section 602(a)(1) of the Federal Property and Administrative Services Act of 1949 (ch. 288, 63 Stat. 399).

§ 6102. Exceptions from advertising requirement

(a) AMERICAN BATTLE MONUMENTS COMMISSION.—Section 6101 of this title does not apply to the American Battle Monuments Commission with respect to leases in foreign countries for office or garage space.

(b) BUREAU OF INTERPARLIAMENTARY UNION FOR PROMOTION OF INTERNATIONAL ARBITRATION.—Section 6101 of this title does not apply to the Bureau of Interparliamentary Union for Promotion of International Arbitration with respect to necessary stenographic reporting services by contract.

(c) DEPARTMENT OF STATE.—Section 6101 of this title does not apply to the Department of State when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section 6101 of this title does not apply to the International Committee of