

108TH CONGRESS  
2D SESSION

# H. R. 4320

To revise, codify, and enact without substantive change certain general and permanent laws, related to public contracts, as title 41, United States Code, “Public Contracts”.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 10, 2004

Mr. SENSENBRENNER (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To revise, codify, and enact without substantive change certain general and permanent laws, related to public contracts, as title 41, United States Code, “Public Contracts”.

1 *Be it enacted by the Senate and House of Representatives of the United*  
2 *States of America in Congress assembled,*

3 **SECTION 1. TITLE 41, UNITED STATES CODE.**

4 Certain general and permanent laws of the United States, related to pub-  
5 lic contracts, are revised, codified, and enacted as title 41, United States  
6 Code, “Public Contracts”, as follows:

7 **TITLE 41—PUBLIC CONTRACTS**

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8 **Subtitle I—Federal Procurement Policy**

9 **PART A—GENERAL**

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PART A—GENERAL

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**CHAPTER 1—DEFINITIONS**

SUBCHAPTER I—SUBTITLE DEFINITIONS

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- 101. Acquisition.
- 102. Commercial component.
- 103. Commercial item.
- 104. Component.
- 105. Federal Acquisition Regulation.
- 106. Full and open competition.
- 107. Item and item of supply.
- 108. Major system.
- 109. Nondevelopmental item.
- 110. Procurement.
- 111. Procurement system.
- 112. Responsible source.
- 113. Standards.
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SUBCHAPTER II—PART B DEFINITIONS

- 131. Competitive procedures.
- 132. Executive agency.
- 133. Simplified acquisition threshold.

5

SUBCHAPTER I—SUBTITLE DEFINITIONS

6

**§ 101. Acquisition**

7

In this subtitle, the term “acquisition”—

8

(1) means the process of acquiring, with appropriated amounts, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

14

(2) includes—

1 (A) the process of acquiring property or services that are al-  
 2 ready in existence, or that must be created, developed, dem-  
 3 onstrated, and evaluated;

4 (B) the description of requirements to satisfy agency needs;

5 (C) solicitation and selection of sources;

6 (D) award of contracts;

7 (E) contract performance;

8 (F) contract financing;

9 (G) management and measurement of contract performance  
 10 through final delivery and payment; and

11 (H) technical and management functions directly related to the  
 12 process of fulfilling agency requirements by contract.

13 **§ 102. Commercial component**

14 In this subtitle, the term “commercial component” means a component  
 15 that is a commercial item.

16 **§ 103. Commercial item**

17 In this subtitle, the term “commercial item” means—

18 (1) an item, other than real property, that—

19 (A) is of a type customarily used by the general public or by  
 20 nongovernmental entities for purposes other than governmental  
 21 purposes; and

22 (B) has been sold, leased, or licensed, or offered for sale, lease,  
 23 or license, to the general public;

24 (2) an item that—

25 (A) evolved from an item described in clause (1) through ad-  
 26 vances in technology or performance; and

27 (B) is not yet available in the commercial marketplace but will  
 28 be available in the commercial marketplace in time to satisfy the  
 29 delivery requirements under a Federal Government solicitation;

30 (3) an item that would satisfy the criteria in clause (1) or (2) were  
 31 it not for—

32 (A) modifications of a type customarily available in the commer-  
 33 cial marketplace; or

34 (B) minor modifications made to meet Government require-  
 35 ments;

36 (4) any combination of items meeting the requirements of clause (1),  
 37 (2), (3), or (5) that are of a type customarily combined and sold in  
 38 combination to the general public;

39 (5) installation services, maintenance services, repair services, train-  
 40 ing services, and other services if—

1 (A) those services are procured for support of an item referred  
 2 to in clause (1), (2), (3), or (4), regardless of whether the services  
 3 are provided by the same source or at the same time as the item;  
 4 and

5 (B) the source of the services provides similar services contem-  
 6 poraneously to the general public under terms and conditions simi-  
 7 lar to those offered to the Government;

8 (6) services offered and sold competitively, in substantial quantities,  
 9 in the commercial marketplace based on established catalog or market  
 10 prices for specific tasks performed or specific outcomes to be achieved  
 11 and under standard commercial terms and conditions;

12 (7) any item, combination of items, or service referred to in clauses  
 13 (1)–(6) even though the item, combination of items, or service is trans-  
 14 ferred between or among separate divisions, subsidiaries, or affiliates  
 15 of a contractor; or

16 (8) a nondevelopmental item if the procuring agency determines, in  
 17 accordance with conditions in the Federal Acquisition Regulation, that  
 18 the item was developed exclusively at private expense and has been sold  
 19 in substantial quantities, on a competitive basis, to multiple State and  
 20 local governments.

21 **§ 104. Component**

22 In this subtitle, the term “component” means an item supplied to the  
 23 Federal Government as part of an end item or of another component.

24 **§ 105. Federal Acquisition Regulation**

25 In this subtitle, the term “Federal Acquisition Regulation” means the  
 26 regulation issued under section 1302(a)(1) of this title.

27 **§ 106. Full and open competition**

28 In this subtitle, the term “full and open competition”, when used with  
 29 respect to a procurement, means that all responsible sources are permitted  
 30 to submit sealed bids or competitive proposals on the procurement.

31 **§ 107. Item and item of supply**

32 In this subtitle, the terms “item” and “item of supply”—

33 (1) mean an individual part, component, subassembly, assembly, or  
 34 subsystem integral to a major system, and other property which may  
 35 be replaced during the service life of the system, including spare parts  
 36 and replenishment spare parts; but

37 (2) do not include packaging or labeling associated with shipment or  
 38 identification of an item.

39 **§ 108. Major system**

40 (a) IN GENERAL.—In this subtitle, the term “major system” means a  
 41 combination of elements that will function together to produce the capabili-

1 ties required to fulfill a mission need. These elements may include hardware,  
 2 equipment, software, or a combination of hardware, equipment, and soft-  
 3 ware, but do not include construction or other improvements to real prop-  
 4 erty.

5 (b) SYSTEM DEEMED TO BE MAJOR SYSTEM.—A system is deemed to  
 6 be a major system if—

7 (1) the Department of Defense is responsible for the system and the  
 8 total expenditures for research, development, testing, and evaluation for  
 9 the system are estimated to exceed \$75,000,000 (based on fiscal year  
 10 1980 constant dollars) or the eventual total expenditure for procure-  
 11 ment of more than \$300,000,000 (based on fiscal year 1980 constant  
 12 dollars);

13 (2) a civilian agency is responsible for the system and total expendi-  
 14 tures for the system are estimated to exceed the greater of \$750,000  
 15 (based on fiscal year 1980 constant dollars) or the dollar threshold for  
 16 a major system established by the agency pursuant to Office of Man-  
 17 agement and Budget (OMB) Circular A-109, entitled “Major Systems  
 18 Acquisitions”; or

19 (3) the head of the agency responsible for the system designates the  
 20 system a major system.

### 21 § 109. Nondevelopmental item

22 In this subtitle, the term “nondevelopmental item” means—

23 (1) a commercial item;

24 (2) a previously developed item of supply that is in use by a depart-  
 25 ment or agency of the Federal Government, a State or local govern-  
 26 ment, or a foreign government with which the United States has a mu-  
 27 tual defense cooperation agreement;

28 (3) an item of supply described in clause (1) or (2) that requires  
 29 only minor modification or modification of the type customarily avail-  
 30 able in the commercial marketplace to meet the requirements of the  
 31 procuring department or agency; or

32 (4) an item of supply currently being produced that does not meet  
 33 the requirements of clause (1), (2), or (3) solely because the item is  
 34 not yet in use.

### 35 § 110. Procurement

36 In this subtitle, the term “procurement” includes all stages of the process  
 37 of acquiring property or services, beginning with the process for determining  
 38 a need for property or services and ending with contract completion and  
 39 closeout.

1    **§ 111. Procurement system**

2       In this subtitle, the term “procurement system” means the integration of  
3    the procurement process, the professional development of procurement per-  
4    sonnel, and the management structure for carrying out the procurement  
5    function.

6    **§ 112. Responsible source**

7       In this subtitle, the term “responsible source” means a prospective con-  
8    tractor that—

9           (1) has adequate financial resources to perform the contract or the  
10          ability to obtain those resources;

11          (2) is able to comply with the required or proposed delivery or per-  
12          formance schedule, taking into consideration all existing commercial  
13          and Federal Government business commitments;

14          (3) has a satisfactory performance record;

15          (4) has a satisfactory record of integrity and business ethics;

16          (5) has the necessary organization, experience, accounting and oper-  
17          ational controls, and technical skills, or the ability to obtain the organi-  
18          zation, experience, controls, and skills;

19          (6) has the necessary production, construction, and technical equip-  
20          ment and facilities, or the ability to obtain the equipment and facilities;  
21          and

22          (7) is otherwise qualified and eligible to receive an award under ap-  
23          plicable laws and regulations.

24    **§ 113. Standards**

25       In this subtitle, the term “standards” means the criteria for determining  
26    the effectiveness of the procurement system by measuring the performance  
27    of the various elements of the system.

28    **§ 114. Supplies**

29       In this subtitle, the term “supplies”—

30           (1) means an individual part, component, subassembly, assembly, or  
31          subsystem integral to a major system, and other property which may  
32          be replaced during the service life of the system, including spare parts  
33          and replenishment spare parts; but

34           (2) does not include packaging or labeling associated with shipment  
35          or identification of an item.

36    **§ 115. Technical data**

37       In this subtitle, the term “technical data”—

38           (1) means recorded information (regardless of the form or method  
39          of the recording) of a scientific or technical nature (including computer  
40          software documentation) relating to supplies procured by an agency;  
41          but

1 (2) does not include computer software or financial, administrative,  
 2 cost or pricing, or management data or other information incidental to  
 3 contract administration.

4 SUBCHAPTER II—PART B DEFINITIONS

5 **§ 131. Competitive procedures**

6 In part B, the term “competitive procedures” means procedures under  
 7 which an agency enters into a contract pursuant to full and open competi-  
 8 tion.

9 **§ 132. Executive agency**

10 In part B, the term “executive agency” means—

- 11 (1) an executive department specified in section 101 of title 5;  
 12 (2) a military department specified in section 102 of title 5;  
 13 (3) an independent establishment as defined in section 104(1) of title  
 14 5; and  
 15 (4) a wholly owned Government corporation fully subject to chapter  
 16 91 of title 31.

17 **§ 133. Simplified acquisition threshold**

18 In part B, the term “simplified acquisition threshold” means \$100,000.

19 PART B—ADMINISTRATIVE

20 **CHAPTER 11—OFFICE OF FEDERAL PROCUREMENT**  
 21 **POLICY**

SUBCHAPTER I—GENERAL

Sec.

1101. Office of Federal Procurement Policy.  
 1102. Administrator for Federal Procurement Policy.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

1121. General authority.  
 1122. Functions.  
 1123. Small business concerns.  
 1124. Tests of innovative procurement methods and procedures.  
 1125. Recipients of Federal grants or assistance.  
 1126. Policy regarding consideration of contractor past performance.  
 1127. Determining benchmark compensation amount.  
 1128. Maintaining necessary capability with respect to acquisition of architectural and engi-  
 neering services.  
 1129. Center of excellence in contracting for services.  
 1130. Effect of part on other law.  
 1131. Annual report.

22 SUBCHAPTER I—GENERAL

23 **§ 1101. Office of Federal Procurement Policy**

24 (a) ORGANIZATION.—There is an Office of Federal Procurement Policy  
 25 in the Office of Management and Budget.

26 (b) PURPOSES.—The purposes of the Office of Federal Procurement Pol-  
 27 icy are to—

- 28 (1) provide overall direction of Federal Government-wide procure-  
 29 ment policies, regulations, procedures, and forms for executive agencies;  
 30 and

1           (2) promote economy, efficiency, and effectiveness in the procure-  
2           ment of property and services by the executive branch of the Govern-  
3           ment.

4           (e) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be  
5           appropriated each fiscal year for the Office of Federal Procurement Policy  
6           to carry out the responsibilities of the Office for that fiscal year.

7           **§ 1102. Administrator for Federal Procurement Policy**

8           (a) HEAD OF OFFICE.—The head of the Office of Federal Procurement  
9           Policy is the Administrator for Federal Procurement Policy.

10          (b) APPOINTMENT.—The Administrator is appointed by the President, by  
11          and with the advice and consent of the Senate.

12                       SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE  
13                       ADMINISTRATOR

14           **§ 1121. General authority**

15          (a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator for  
16          Federal Procurement Policy shall provide overall direction of procurement  
17          policy and leadership in the development of procurement systems of the ex-  
18          ecutive agencies.

19          (b) FEDERAL ACQUISITION REGULATION.—To the extent that the Ad-  
20          ministrator considers appropriate in carrying out the policies and functions  
21          set forth in this part, and with due regard for applicable laws and the pro-  
22          gram activities of the executive agencies, the Administrator may prescribe  
23          Federal Government-wide procurement policies. The policies shall be imple-  
24          mented in a single Government-wide procurement regulation called the Fed-  
25          eral Acquisition Regulation.

26          (c) POLICIES TO BE FOLLOWED BY EXECUTIVE AGENCIES.—

27               (1) AREAS OF PROCUREMENT FOR WHICH POLICIES ARE TO BE FOL-  
28               LOWED.—The policies implemented in the Federal Acquisition Regula-  
29               tion shall be followed by executive agencies in the procurement of—

30                       (A) property other than real property in being;

31                       (B) services, including research and development; and

32                       (C) construction, alteration, repair, or maintenance of real prop-  
33                       erty.

34               (2) PROCEDURES TO ENSURE COMPLIANCE.—The Administrator  
35               shall establish procedures to ensure compliance with the Federal Acqui-  
36               sition Regulation by all executive agencies.

37               (3) APPLICATION OF OTHER LAWS.—The authority of an executive  
38               agency under another law to prescribe policies, regulations, procedures,  
39               and forms for procurement is subject to the authority conferred in this  
40               section and sections 1122(a)–(e)(1), 1125, 1126, 1130, 1131, and  
41               2304 of this title.

1 (d) WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO  
 2 ACT.—In any instance in which the Administrator determines that the De-  
 3 partment of Defense, the National Aeronautics and Space Administration,  
 4 and the General Services Administration are unable to agree on or fail to  
 5 issue Government-wide regulations, procedures, and forms in a timely man-  
 6 ner, including regulations, procedures, and forms necessary to implement  
 7 prescribed policy the Administrator initiates under subsection (b), the Ad-  
 8 ministrator, with due regard for applicable laws and the program activities  
 9 of the executive agencies and consistent with the policies and functions set  
 10 forth in this part, shall prescribe Government-wide regulations, procedures,  
 11 and forms which executive agencies shall follow in procuring items listed in  
 12 subsection (c)(1).

13 (e) OVERSIGHT OF PROCUREMENT REGULATIONS OF OTHER AGEN-  
 14 CIES.—The Administrator, with the concurrence of the Director of the Of-  
 15 fice of Management and Budget, and with consultation with the head of the  
 16 agency concerned, may deny the prescription of or rescind any Government-  
 17 wide regulation or final rule or regulation of any executive agency relating  
 18 to procurement if the Administrator determines that the rule or regulation  
 19 is inconsistent with any policies, regulations, or procedures issued pursuant  
 20 to subsection (b).

21 (f) LIMITATION ON AUTHORITY.—The authority of the Administrator  
 22 under this part does not—

23 (1) impair or interfere with the determination by executive agencies  
 24 of their need for, or their use of, specific property, services, or con-  
 25 struction, including particular specifications for the property, services,  
 26 or construction; or

27 (2) interfere with the determination by executive agencies of specific  
 28 actions in the award or administration of procurement contracts.

## 29 **§ 1122. Functions**

30 (a) IN GENERAL.—The functions of the Administrator for Federal Pro-  
 31 curement Policy include—

32 (1) providing leadership and ensuring action by the executive agen-  
 33 cies in establishing, developing, and maintaining the single system of  
 34 simplified Federal Government-wide procurement regulations and re-  
 35 solving differences among the executive agencies in developing sim-  
 36 plified Government-wide procurement regulations, procedures, and  
 37 forms;

38 (2) coordinating the development of Government-wide procurement  
 39 system standards that executive agencies shall implement in their pro-  
 40 curement systems;

1 (3) providing leadership and coordination in formulating the execu-  
2 tive branch position on legislation relating to procurement;

3 (4)(A) providing for and directing the activities of the computer-  
4 based Federal Procurement Data System (including recommending to  
5 the Administrator of General Services a sufficient budget for those ac-  
6 tivities), which shall be located in the General Services Administration,  
7 in order to adequately collect, develop, and disseminate procurement  
8 data; and

9 (B) ensuring executive agency compliance with the record require-  
10 ments of section 1710 of this title;

11 (5) providing for and directing the activities of the Federal Acquisi-  
12 tion Institute (including recommending to the Administrator of General  
13 Services a sufficient budget for those activities), which shall be located  
14 in the General Services Administration, in order to—

15 (A) foster and promote the development of a professional acqui-  
16 sition workforce Government-wide;

17 (B) promote and coordinate Government-wide research and  
18 studies to improve the procurement process and the laws, policies,  
19 methods, regulations, procedures, and forms relating to acquisition  
20 by the executive agencies;

21 (C) collect data and analyze acquisition workforce data from the  
22 Office of Personnel Management, the heads of executive agencies,  
23 and, through periodic surveys, from individual employees;

24 (D) periodically analyze acquisition career fields to identify crit-  
25 ical competencies, duties, and tasks and related academic pre-  
26 requisites, skills, and knowledge;

27 (E) coordinate and assist agencies in identifying and recruiting  
28 highly qualified candidates for acquisition fields;

29 (F) develop instructional materials for acquisition personnel in  
30 coordination with private and public acquisition colleges and train-  
31 ing facilities;

32 (G) evaluate the effectiveness of training and career develop-  
33 ment programs for acquisition personnel;

34 (H) promote the establishment and utilization of academic pro-  
35 grams by colleges and universities in acquisition fields;

36 (I) facilitate, to the extent requested by agencies, interagency  
37 intern and training programs; and

38 (J) perform other career management or research functions as  
39 directed by the Administrator for Federal Procurement Policy;

40 (6) administering section 1703(a)–(h) of this title;

1 (7) establishing criteria and procedures to ensure the effective and  
2 timely solicitation of the viewpoints of interested parties in the develop-  
3 ment of procurement policies, regulations, procedures, and forms;

4 (8) developing standard contract forms and contract language in  
5 order to reduce the Government's cost of procuring property and serv-  
6 ices and the private sector's cost of doing business with the Govern-  
7 ment;

8 (9) providing for a Government-wide award to recognize and promote  
9 vendor excellence;

10 (10) providing for a Government-wide award to recognize and pro-  
11 mote excellence in officers and employees of the Government serving in  
12 procurement-related positions;

13 (11) developing policies, in consultation with the Administrator of  
14 the Small Business Administration, that ensure that small businesses,  
15 qualified HUBZone small business concerns (as defined in section 3(p)  
16 of the Small Business Act (15 U.S.C. 632(p)), small businesses owned  
17 and controlled by socially and economically disadvantaged individuals,  
18 and small businesses owned and controlled by women are provided with  
19 the maximum practicable opportunities to participate in procurements  
20 that are conducted for amounts below the simplified acquisition thresh-  
21 old;

22 (12) developing policies that will promote achievement of goals for  
23 participation by small businesses, qualified HUBZone small business  
24 concerns (as defined in section 3(p) of the Small Business Act (15  
25 U.S.C. 632(p)), small businesses owned and controlled by socially and  
26 economically disadvantaged individuals, and small businesses owned  
27 and controlled by women; and

28 (13) completing action, as appropriate, on the recommendations of  
29 the Commission on Government Procurement.

30 (b) CONSULTATION AND ASSISTANCE.—In carrying out the functions in  
31 subsection (a), the Administrator for Federal Procurement Policy—

32 (1) shall consult with the affected executive agencies, including the  
33 Small Business Administration;

34 (2) with the concurrence of the heads of affected executive agencies,  
35 may designate one or more executive agencies to assist in performing  
36 those functions; and

37 (3) may establish advisory committees or other interagency groups  
38 to assist in providing for the establishment, development, and mainte-  
39 nance of a single system of simplified Government-wide procurement  
40 regulations and to assist in performing any other function the Adminis-  
41 trator considers appropriate.

1 (c) ASSIGNMENT, DELEGATION, OR TRANSFER.—

2 (1) TO ADMINISTRATOR.—Except as otherwise provided by law, only  
3 duties, functions, or responsibilities expressly assigned by this part  
4 shall be assigned, delegated, or transferred to the Administrator for  
5 Federal Procurement Policy.

6 (2) BY ADMINISTRATOR.—

7 (A) WITHIN OFFICE.—The Administrator of Federal Procure-  
8 ment Policy may make and authorize delegations within the Office  
9 of Federal Procurement Policy that the Administrator determines  
10 to be necessary to carry out this part.

11 (B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator of  
12 Federal Procurement Policy may delegate, and authorize succes-  
13 sive redelegations of, an authority, function, or power of the Ad-  
14 ministrator under this part (other than the authority to provide  
15 overall direction of Federal procurement policy and to prescribe  
16 policies and regulations to carry out the policy) to another execu-  
17 tive agency with the consent of the head of the executive agency  
18 or at the direction of the President.

19 **§ 1123. Small business concerns**

20 In formulating the Federal Acquisition Regulation and procedures to en-  
21 sure compliance with the Regulation, the Administrator of the Office of  
22 Federal Procurement Policy, in consultation with the Small Business Ad-  
23 ministration, shall—

24 (1) conduct analyses of the impact on small business concerns result-  
25 ing from revised procurement regulations; and

26 (2) incorporate into revised procurement regulations simplified bid-  
27 ding, contract performance, and contract administration procedures for  
28 small business concerns.

29 **§ 1124. Tests of innovative procurement methods and proce-  
30 dures**

31 (a) IN GENERAL.—The Administrator for Federal Procurement Policy  
32 may develop innovative procurement methods and procedures to be tested  
33 by selected executive agencies. In developing a program to test innovative  
34 procurement methods and procedures under this subsection, the Adminis-  
35 trator shall consult with the heads of executive agencies to—

36 (1) ascertain the need for and specify the objectives of the program;

37 (2) develop the guidelines and procedures for carrying out the pro-  
38 gram and the criteria to be used in measuring the success of the pro-  
39 gram;

1 (3) evaluate the potential costs and benefits which may be derived  
2 from the innovative procurement methods and procedures tested under  
3 the program;

4 (4) select the appropriate executive agencies or components of execu-  
5 tive agencies to carry out the program;

6 (5) specify the categories and types of products or services to be pro-  
7 cured under the program; and

8 (6) develop the methods to be used to analyze the results of the pro-  
9 gram.

10 (b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test  
11 innovative procurement methods and procedures may not be carried out un-  
12 less approved by the heads of the executive agencies selected to carry out  
13 the program.

14 (c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines  
15 that it is necessary to waive the application of a provision of law to carry  
16 out a proposed program to test innovative procurement methods and proce-  
17 dures under subsection (a), the Administrator shall transmit notice of the  
18 proposed program to the Committee on Government Reform of the House  
19 of Representatives and the Committee on Governmental Affairs of the Sen-  
20 ate and request that the Committees take the necessary action to provide  
21 that the provision of law does not apply with respect to the proposed pro-  
22 gram. The notification to Congress shall include—

23 (1) a description of the proposed program (including the scope and  
24 purpose of the proposed program);

25 (2) the procedures to be followed in carrying out the proposed pro-  
26 gram;

27 (3) the provisions of law affected and the application of any provi-  
28 sion of law that must be waived in order to carry out the proposed pro-  
29 gram; and

30 (4) the executive agencies involved in carrying out the proposed pro-  
31 gram.

32 **§ 1125. Recipients of Federal grants or assistance**

33 (a) AUTHORITY.—With due regard to applicable laws and the program  
34 activities of the executive agencies administering Federal programs of  
35 grants or assistance, the Administrator for Federal Procurement Policy may  
36 prescribe Federal Government-wide policies, regulations, procedures, and  
37 forms that the Administrator considers appropriate and that executive agen-  
38 cies shall follow in providing for the procurement, to the extent required  
39 under those programs, of property or services referred to in section  
40 1121(e)(1) of this title by recipients of Federal grants or assistance under  
41 the programs.

1 (b) LIMITATION.—Subsection (a) does not—

2 (1) permit the Administrator to authorize procurement or supply  
3 support, either directly or indirectly, to a recipient of a Federal grant  
4 or assistance; or

5 (2) authorize action by a recipient contrary to State and local law  
6 in the case of a program to provide a Federal grant or assistance to  
7 a State or political subdivision.

8 **§ 1126. Policy regarding consideration of contractor past**  
9 **performance**

10 (a) GUIDANCE.—The Administrator for Federal Procurement Policy shall  
11 prescribe for executive agencies guidance regarding consideration of the past  
12 contract performance of offerors in awarding contracts. The guidance shall  
13 include—

14 (1) standards for evaluating past performance with respect to cost  
15 (when appropriate), schedule, compliance with technical or functional  
16 specifications, and other relevant performance factors that facilitate  
17 consistent and fair evaluation by all executive agencies;

18 (2) policies for the collection and maintenance of information on past  
19 contract performance that, to the maximum extent practicable, facili-  
20 tate automated collection, maintenance, and dissemination of informa-  
21 tion and provide for ease of collection, maintenance, and dissemination  
22 of information by other methods, as necessary;

23 (3) policies for ensuring that—

24 (A) offerors are afforded an opportunity to submit relevant in-  
25 formation on past contract performance, including performance  
26 under contracts entered into by the executive agency concerned,  
27 other departments and agencies of the Federal Government, agen-  
28 cies of State and local governments, and commercial customers;  
29 and

30 (B) the information submitted by offerors is considered; and

31 (4) the period for which information on past performance of offerors  
32 may be maintained and considered.

33 (b) INFORMATION NOT AVAILABLE.—If there is no information on past  
34 contract performance of an offeror or the information on past contract per-  
35 formance is not available, the offeror may not be evaluated favorably or un-  
36 favorably on the factor of past contract performance.

37 **§ 1127. Determining benchmark compensation amount**

38 (a) DEFINITIONS.—In this section—

39 (1) BENCHMARK COMPENSATION AMOUNT.—The term “benchmark  
40 compensation amount”, for a fiscal year, is the median amount of the  
41 compensation provided for all senior executives of all benchmark cor-

1           porations for the most recent year for which data is available at the  
2           time the determination under subsection (b) is made.

3           (2) BENCHMARK CORPORATION.—The term “benchmark corpora-  
4           tion”, with respect to a fiscal year, means a publicly-owned United  
5           States corporation that has annual sales in excess of \$50,000,000 for  
6           the fiscal year.

7           (3) COMPENSATION.—The term “compensation”, for a fiscal year,  
8           means the total amount of wages, salary, bonuses, and deferred com-  
9           pensation for the fiscal year, whether paid, earned, or otherwise accru-  
10          ing, as recorded in an employer’s cost accounting records for the fiscal  
11          year.

12          (4) FISCAL YEAR.—The term “fiscal year” means a fiscal year a  
13          contractor establishes for accounting purposes.

14          (5) PUBLICLY-OWNED UNITED STATES CORPORATION.—The term  
15          “publicly-owned United States corporation” means a corporation—

16                (A) organized under the laws of a State of the United States,  
17                the District of Columbia, Puerto Rico, or a possession of the  
18                United States; and

19                (B) whose voting stock is publicly traded.

20          (6) SENIOR EXECUTIVES.—The term “senior executives”, with re-  
21          spect to a contractor, means the five most highly compensated employ-  
22          ees in management positions at each home office and each segment of  
23          the contractor.

24          (b) DETERMINING BENCHMARK COMPENSATION AMOUNT.—For purposes  
25          of section 4304(a)(16) of this title and section 2324(e)(1)(P) of title 10,  
26          the Administrator for Federal Procurement Policy shall review commercially  
27          available surveys of executive compensation and, on the basis of the results  
28          of the review, determine a benchmark compensation amount to apply for  
29          each fiscal year. In making determinations under this subsection the Admin-  
30          istrator shall consult with the Director of the Defense Contract Audit Agen-  
31          cy and other officials of executive agencies as the Administrator considers  
32          appropriate.

33          **§ 1128. Maintaining necessary capability with respect to ac-**  
34          **quisition of architectural and engineering services**

35          The Administrator for Federal Procurement Policy, in consultation with  
36          the Secretary of Defense, the Administrator of General Services, and the  
37          Director of the Office of Personnel Management, shall develop and imple-  
38          ment a plan to ensure that the Federal Government maintains the necessary  
39          capability with respect to the acquisition of architectural and engineering  
40          services to—

1 (1) ensure that Government employees have the expertise to deter-  
2 mine agency requirements for those services;

3 (2) establish priorities and programs, including acquisition plans;

4 (3) establish professional standards;

5 (4) develop scopes of work; and

6 (5) award and administer contracts for those services.

7 **§ 1129. Center of excellence in contracting for services**

8 The Administrator for Federal Procurement Policy shall maintain a cen-  
9 ter of excellence in contracting for services. The center shall assist the ac-  
10 quisition community by identifying, and serving as a clearinghouse for, best  
11 practices in contracting for services in the public and private sectors.

12 **§ 1130. Effect of part on other law**

13 This part does not impair or affect the authorities or responsibilities con-  
14 ferred by part C of this subtitle.

15 **§ 1131. Annual report**

16 The Administrator for Federal Procurement Policy annually shall submit  
17 to Congress an assessment of the progress made in executive agencies in  
18 implementing the policy regarding major acquisitions that is stated in sec-  
19 tion 3104(a) of this title. The Administrator shall use data from existing  
20 management systems in making the assessment.

21 **CHAPTER 13—ACQUISITION COUNCILS**

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

Sec.

1301. Establishment and membership.

1302. Functions and authority.

1303. Contract clauses and certifications.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

1311. Establishment and membership.

1312. Functions.

22 SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY  
23 COUNCIL

24 **§ 1301. Establishment and membership**

25 (a) ESTABLISHMENT.—There is a Federal Acquisition Regulatory Council  
26 to assist in the direction and coordination of Federal Government-wide pro-  
27 curement policy and Government-wide procurement regulatory activities in  
28 the Government.

29 (b) MEMBERSHIP.—

30 (1) MAKEUP OF COUNCIL.—The Council consists of—

31 (A) the Administrator for Federal Procurement Policy;

32 (B) the Secretary of Defense;

33 (C) the Administrator of National Aeronautics and Space; and

34 (D) the Administrator of General Services.

35 (2) DESIGNATION OF OTHER OFFICIALS.—

1 (A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding  
 2 section 121(d)(1) and (2) of title 40, the officials specified in  
 3 clauses (B)–(D) of paragraph (1) may designate to serve on and  
 4 attend meetings of the Council in place of that official—

5 (i) the official assigned by statute with the responsibility  
 6 for acquisition policy in each of their respective agencies or,  
 7 in the case of the Secretary of Defense, an official at an orga-  
 8 nizational level not lower than an Assistant Secretary of De-  
 9 fense within the Office of the Under Secretary of Defense for  
 10 Acquisition, Technology, and Logistics; or

11 (ii) if no official of that agency is assigned by statute with  
 12 the responsibility for acquisition policy for that agency, the  
 13 official designated pursuant to section 1702(e) of this title.

14 (B) LIMITATION ON DESIGNATION.—No other official or em-  
 15 ployee may be designated to serve on the Council.

16 **§ 1302. Functions and authority**

17 (a) FUNCTIONS.—

18 (1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—  
 19 Subject to sections 1121, 1122(a)–(e)(1), 1125, 1126, 1130, 1131, and  
 20 2304 of this title, the Administrator of General Services, the Secretary  
 21 of Defense, and the Administrator of National Aeronautics and Space,  
 22 pursuant to their respective authorities under part C of this subtitle,  
 23 chapters 4 and 137 of title 10, and the National Aeronautics and  
 24 Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and  
 25 maintain in accordance with subsection (d) a single Government-wide  
 26 procurement regulation, to be known as the Federal Acquisition Regu-  
 27 lation.

28 (2) LIMITATION ON OTHER REGULATIONS.—Other regulations relat-  
 29 ing to procurement issued by an executive agency shall be limited to—

30 (A) regulations essential to implement Government-wide policies  
 31 and procedures within the agency; and

32 (B) additional policies and procedures required to satisfy the  
 33 specific and unique needs of the agency.

34 (3) ENSURE CONSISTENT REGULATIONS.—The Administrator for  
 35 Federal Procurement Policy, in consultation with the Council, shall en-  
 36 sure that procurement regulations prescribed by executive agencies are  
 37 consistent with the Federal Acquisition Regulation and in accordance  
 38 with the policies prescribed pursuant to section 1121(b) of this title.

39 (4) REQUEST TO REVIEW REGULATION.—

40 (A) BASIS FOR REQUEST.—Under procedures the Administrator  
 41 for Federal Procurement Policy establishes, a person may request

1 the Administrator to review a regulation relating to procurement  
2 on the basis that the regulation is inconsistent with the Federal  
3 Acquisition Regulation.

4 (B) PERIOD OF REVIEW.—Unless the request is frivolous or  
5 does not, on its face, state a valid basis for the review, the Admin-  
6 istrator for Federal Procurement Policy shall complete the review  
7 not later than 60 days after receiving the request. The time for  
8 completion of the review may be extended if the Administrator de-  
9 termines that an additional period of review is required. The Ad-  
10 ministrator shall advise the requester of the reasons for the exten-  
11 sion and the date by which the review will be completed.

12 (5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IM-  
13 PROVED.—If the Administrator for Federal Procurement Policy deter-  
14 mines that a regulation relating to procurement is inconsistent with the  
15 Federal Acquisition Regulation or that the regulation otherwise should  
16 be revised to remove an inconsistency with the policies issued under  
17 section 1121(b) of this title, the Administrator shall rescind or deny  
18 the promulgation of the regulation or take other action authorized  
19 under sections 1121, 1122(a)–(c)(1), 1125, 1126, 1130, 1131, and  
20 2304 of this title as may be necessary to remove the inconsistency. If  
21 the Administrator determines that the regulation, although not incon-  
22 sistent with the Federal Acquisition Regulation or those policies, should  
23 be revised to improve compliance with the Regulation or policies, the  
24 Administrator shall take action authorized under sections 1121,  
25 1122(a)–(c)(1), 1125, 1126, 1130, 1131, and 2304 as may be nec-  
26 essary and appropriate.

27 (6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The  
28 decisions of the Administrator for Federal Procurement Policy shall be  
29 in writing and made publicly available.

30 (b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

31 (1) IN GENERAL.—Subject to the authority, direction, and control of  
32 the head of the agency concerned, each official who represents an agen-  
33 cy on the Council pursuant to section 1301(b) of this title shall—

34 (A) approve or disapprove all regulations relating to procure-  
35 ment that are proposed for public comment, prescribed in final  
36 form, or otherwise made effective by that agency before the regula-  
37 tion may be prescribed in final form, or otherwise made effective,  
38 except that the official may grant an interim approval, without re-  
39 view, for not more than 60 days for a procurement regulation in  
40 urgent and compelling circumstances;

1 (B) carry out the responsibilities of that agency set forth in  
 2 chapter 35 of title 44 for each information collection request that  
 3 relates to procurement rules or regulations; and

4 (C) eliminate or reduce—

5 (i) any redundant or unnecessary levels of review and ap-  
 6 proval in the procurement system of that agency; and

7 (ii) redundant or unnecessary procurement regulations  
 8 which are unique to that agency.

9 (2) LIMITATION ON DELEGATION.—The authority to review and ap-  
 10 prove or disapprove regulations under paragraph (1)(A) may not be  
 11 delegated to an individual outside the office of the official who rep-  
 12 represents the agency on the Council pursuant to section 1301(b) of this  
 13 title.

14 (c) GOVERNING POLICIES.—All actions of the Council and of members of  
 15 the Council shall be in accordance with and furtherance of the policies pre-  
 16 scribed under section 1121(b) of this title.

17 (d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION  
 18 REGULATION.—Subject to section 1121(d) of this title, the Council shall  
 19 manage, coordinate, control, and monitor the maintenance of, issuance of,  
 20 and changes in, the Federal Acquisition Regulation.

21 **§ 1303. Contract clauses and certifications**

22 (a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—  
 23 The Federal Acquisition Regulatory Council shall prescribe regulations to  
 24 discourage the use of a nonstandard contract clause on a repetitive basis.  
 25 The regulations shall include provisions that—

26 (1) clearly define what types of contract clauses are to be treated  
 27 as nonstandard clauses; and

28 (2) require prior approval for the use of a nonstandard clause on a  
 29 repetitive basis by an official at a level of responsibility above the con-  
 30 tracting officer.

31 (b) WHEN CERTIFICATION REQUIRED.—

32 (1) BY LAW.—A certification by a contractor or offeror in a procure-  
 33 ment made or to be made by the Federal Government is not required  
 34 by a law unless the law specifically provides that certification shall be  
 35 required.

36 (2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a  
 37 certification by a contractor or offeror may not be included in the Fed-  
 38 eral Acquisition Regulation unless—

39 (A) the certification requirement is specifically imposed by stat-  
 40 ute; or

1 (B) written justification for the certification requirement is pro-  
 2 vided to the Administrator for Federal Procurement Policy by the  
 3 Council and the Administrator approves in writing the inclusion of  
 4 the certification requirement.

5 (3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

6 (A) DEFINITION.—In subparagraph (B), “head of the executive  
 7 agency” with respect to a military department means the Sec-  
 8 retary of Defense.

9 (B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED  
 10 IN REGULATION.—A requirement for a certification by a con-  
 11 tractor or offeror may not be included in a procurement regulation  
 12 of an executive agency unless—

13 (i) the certification requirement is specifically imposed by  
 14 statute; or

15 (ii) written justification for the certification requirement is  
 16 provided to the head of the executive agency by the senior  
 17 procurement executive of the agency and the head of the exec-  
 18 utive agency approves in writing the inclusion of the certifi-  
 19 cation requirement.

20 SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

21 **§ 1311. Establishment and membership**

22 (a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisi-  
 23 tion Officers Council.

24 (b) MEMBERSHIP.—The members of the Council are—

25 (1) the Deputy Director for Management of the Office of Manage-  
 26 ment and Budget;

27 (2) the Administrator for Federal Procurement Policy;

28 (3) the Under Secretary of Defense for Acquisition, Technology, and  
 29 Logistics;

30 (4) the chief acquisition officer of each executive agency that is re-  
 31 quired to have a chief acquisition officer under section 1702 of this  
 32 title and the senior procurement executive of each military department;  
 33 and

34 (5) any other senior agency officer of each executive agency, ap-  
 35 pointed by the head of the agency in consultation with the Chairman  
 36 of the Council, who can effectively assist the Council in performing the  
 37 functions set forth in section 1312(b) of this title and supporting the  
 38 associated range of acquisition activities.

39 (c) LEADERSHIP AND SUPPORT.—

40 (1) CHAIRMAN.—The Deputy Director is the chairman of the Coun-  
 41 cil.

1 (2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be se-  
 2 lected by the Council from among its members. The Vice Chairman  
 3 serves for one year and may serve multiple terms.

4 (3) LEADER OF ACTIVITIES.—The Administrator for Federal Pro-  
 5 curement Policy shall lead the activities of the Council on behalf of the  
 6 Deputy Director.

7 (4) SUPPORT.—The Administrator for General Services shall provide  
 8 administrative and other support for the Council.

9 **§ 1312. Functions**

10 (a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the  
 11 principal interagency forum for monitoring and improving the Federal ac-  
 12 quisition system.

13 (b) FUNCTIONS.—The Council shall perform functions that include the  
 14 following:

15 (1) Develop recommendations for the Director of the Office of Man-  
 16 agement and Budget on Federal acquisition policies and requirements.

17 (2) Share experiences, ideas, best practices, and innovative ap-  
 18 proaches related to Federal acquisition.

19 (3) Assist the Administrator for Federal Procurement Policy in the  
 20 identification, development, and coordination of multiagency projects  
 21 and other innovative initiatives to improve Federal acquisition.

22 (4) Promote effective business practices that ensure the timely deliv-  
 23 ery of best value products to the Federal Government and achieve ap-  
 24 propriate public policy objectives.

25 (5) Further integrity, fairness, competition, openness, and efficiency  
 26 in the Federal acquisition system.

27 (6) Work with the Office of Personnel Management to assess and ad-  
 28 dress the hiring, training, and professional development needs of the  
 29 Federal Government related to acquisition.

30 (7) Work with the Administrator and the Federal Acquisition Regu-  
 31 latory Council to promote the business practices referred to in para-  
 32 graph (4) and other results of the functions carried out under this sub-  
 33 section.

34 **CHAPTER 15—COST ACCOUNTING STANDARDS**

Sec.

1501. Cost Accounting Standards Board.

1502. Cost accounting standards.

1503. Contract price adjustment.

1504. Effect on other standards and regulations.

1505. Examinations.

1506. Authorization of appropriations.

35 **§ 1501. Cost Accounting Standards Board**

36 (a) ORGANIZATION.—The Cost Accounting Standards Board is an inde-  
 37 pendent board in the Office of Federal Procurement Policy.

1 (b) MEMBERSHIP.—

2 (1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The  
3 Board consists of five members. One member is the Administrator for  
4 Federal Procurement Policy, who serves as Chairman. The other four  
5 members, all of whom shall have experience in Federal Government  
6 contract cost accounting, are as follows:

7 (A) two representatives of the Government—

8 (i) one of whom is a representative of the Department of  
9 Defense appointed by the Secretary of Defense; and

10 (ii) one of whom is an officer or employee of the General  
11 Services Administration appointed by the Administrator of  
12 General Services.

13 (B) two individuals from the private sector, each of whom is ap-  
14 pointed by the Administrator for Federal Procurement Policy,  
15 and—

16 (i) one of whom is a representative of industry; and

17 (ii) one of whom is particularly knowledgeable about cost  
18 accounting problems and systems.

19 (2) TERM OF OFFICE.—

20 (A) LENGTH OF TERM.—The term of office of each member,  
21 other than the Administrator for Federal Procurement Policy, is  
22 four years. The terms are staggered, with the terms of two mem-  
23 bers expiring in the same year, the term of another member expir-  
24 ing the next year, and the term of the last member expiring the  
25 year after that.

26 (B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING  
27 AGENCY.—A member appointed under paragraph (1)(A) may not  
28 continue to serve after ceasing to be an officer or employee of the  
29 agency from which that member was appointed.

30 (3) VACANCY.—A vacancy on the Board shall be filled in the same  
31 manner in which the original appointment was made. A member ap-  
32 pointed to fill a vacancy serves for the remainder of the term for which  
33 that member's predecessor was appointed.

34 (c) SENIOR STAFF.—The Administrator for Federal Procurement Policy,  
35 after consultation with the Board, may—

36 (1) appoint an executive secretary and two additional staff members  
37 without regard to the provisions of title 5 governing appointments in  
38 the competitive service; and

39 (2) pay those employees without regard to the provisions of chapter  
40 51 and subchapter III of chapter 53 of title 5 relating to classification  
41 and General Schedule pay rates, except that those employees may not

1 receive pay in excess of the maximum rate of basic pay payable under  
2 section 5376 of title 5.

3 (d) OTHER STAFF.—The Administrator for Federal Procurement Policy  
4 may appoint, fix the compensation of, and remove additional employees of  
5 the Board under the applicable provisions of title 5.

6 (e) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory  
7 committees and task forces to assist the Board in carrying out its functions  
8 and responsibilities—

9 (1) the Board, with the consent of the head of a Federal agency,  
10 may use, without reimbursement, personnel of that agency; and

11 (2) the Administrator for Federal Procurement Policy, after con-  
12 sultation with the Board, may procure temporary and intermittent  
13 services of personnel under section 3109(b) of title 5.

14 (f) COMPENSATION.—

15 (1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of  
16 the Board who are officers or employees of the Government, and offi-  
17 cers and employees of other agencies of the Government who are used  
18 under subsection (e)(1), may not receive additional compensation for  
19 services but shall continue to be compensated by the employing depart-  
20 ment or agency of the officer or employee.

21 (2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the  
22 Board appointed from the private sector shall receive compensation at  
23 a rate not to exceed the daily equivalent of the rate for level IV of the  
24 Executive Schedule for each day (including travel time) in which the  
25 member is engaged in the actual performance of duties vested in the  
26 Board.

27 (3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual  
28 hired under subsection (e)(2) may receive compensation at a rate fixed  
29 by the Administrator for Federal Procurement Policy, but not to exceed  
30 the daily equivalent of the rate for level V of the Executive Schedule  
31 for each day (including travel time) in which the individual is properly  
32 engaged in the actual performance of duties under this chapter.

33 (4) TRAVEL EXPENSES.—While serving away from home or regular  
34 place of business, Board members and other individuals serving on an  
35 intermittent basis under this chapter shall be allowed travel expenses  
36 in accordance with section 5703 of title 5.

37 **§ 1502. Cost accounting standards**

38 (a) AUTHORITY.—

39 (1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting  
40 Standards Board has exclusive authority to prescribe, amend, and re-  
41 scind cost accounting standards, and interpretations of the standards,

1 designed to achieve uniformity in the cost accounting standards gov-  
2 erning measurement, assignment, and allocation of costs to contracts  
3 with the Federal Government.

4 (2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The  
5 Administrator for Federal Procurement Policy, after consultation with  
6 the Board, shall prescribe rules and procedures governing actions of  
7 the Board under this chapter. The rules and procedures shall require  
8 that any action to prescribe, amend, or rescind a standard or interpre-  
9 tation be approved by majority vote of the Board.

10 (b) MANDATORY USE OF STANDARDS.—

11 (1) SUBCONTRACT.—

12 (A) DEFINITION.—In this paragraph, “subcontract” includes a  
13 transfer of commercial items between divisions, subsidiaries, or af-  
14 filiates of a contractor or subcontractor.

15 (B) WHEN STANDARDS ARE TO BE USED.—Cost accounting  
16 standards prescribed under this chapter are mandatory for use by  
17 all executive agencies and by contractors and subcontractors in es-  
18 timating, accumulating, and reporting costs in connection with the  
19 pricing and administration of, and settlement of disputes con-  
20 cerning, all negotiated prime contract and subcontract procure-  
21 ments with the Federal Government in excess of \$500,000.

22 (C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does  
23 not apply to—

24 (i) a contract or subcontract for the acquisition of a com-  
25 mercial item;

26 (ii) a contract or subcontract where the price negotiated is  
27 based on a price set by law or regulation;

28 (iii) a firm, fixed-price contract or subcontract awarded on  
29 the basis of adequate price competition without submission of  
30 certified cost or pricing data; or

31 (iv) a contract or subcontract with a value of less than  
32 \$7,500,000 if, when the contract or subcontract is entered  
33 into, the segment of the contractor or subcontractor that will  
34 perform the work has not been awarded at least one contract  
35 or subcontract with a value of more than \$7,500,000 that is  
36 covered by the standards.

37 (2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

38 (A) exempt classes of contractors and subcontractors from the  
39 requirements of this chapter; and

40 (B) establish procedures for the waiver of the requirements of  
41 this chapter for individual contracts and subcontracts.

1 (3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

2 (A) IN GENERAL.—The head of an executive agency may waive  
3 the applicability of the cost accounting standards for a contract  
4 or subcontract with a value of less than \$15,000,000 if that offi-  
5 cial determines in writing that the segment of the contractor or  
6 subcontractor that will perform the work—

7 (i) is primarily engaged in the sale of commercial items;  
8 and

9 (ii) would not otherwise be subject to the cost accounting  
10 standards under this section.

11 (B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an execu-  
12 tive agency may waive the applicability of the cost accounting  
13 standards for a contract or subcontract under exceptional cir-  
14 cumstances when necessary to meet the needs of the agency. A de-  
15 termination to waive the applicability of the standards under this  
16 subparagraph shall be set forth in writing and shall include a  
17 statement of the circumstances justifying the waiver.

18 (C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head  
19 of an executive agency may not delegate the authority under sub-  
20 paragraph (A) or (B) to an official in the executive agency below  
21 the senior policymaking level in the executive agency.

22 (D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The  
23 Federal Acquisition Regulation shall include—

24 (i) criteria for selecting an official to be delegated authority  
25 to grant waivers under subparagraph (A) or (B); and

26 (ii) the specific circumstances under which the waiver may  
27 be granted.

28 (E) REPORT.—The head of each executive agency shall report  
29 the waivers granted under subparagraphs (A) and (B) for that  
30 agency to the Board on an annual basis.

31 (c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND IN-  
32 TERPRETATIONS.—Before prescribing cost accounting standards and inter-  
33 pretations, the Board shall—

34 (1) take into account, after consultation and discussions with the  
35 Comptroller General, professional accounting organizations, contrac-  
36 tors, and other interested parties—

37 (A) the probable costs of implementation, including any infla-  
38 tionary effects, compared to the probable benefits;

39 (B) the advantages, disadvantages, and improvements antici-  
40 pated in the pricing and administration of, and settlement of dis-  
41 putes concerning, contracts; and

1 (C) the scope of, and alternatives available to, the action pro-  
2 posed to be taken;

3 (2) prepare and publish a report in the Federal Register on the  
4 issues reviewed under clause (1);

5 (3)(A) publish an advanced notice of proposed rulemaking in the  
6 Federal Register to solicit comments on the report prepared under  
7 clause (2);

8 (B) provide all parties affected at least 60 days after publication to  
9 submit their views and comments; and

10 (C) during the 60-day period, consult with the Comptroller General  
11 and consider any recommendation the Comptroller General may make;  
12 and

13 (4) publish a notice of proposed rulemaking in the Federal Register  
14 and provide all parties affected at least 60 days after publication to  
15 submit their views and comments.

16 (d) EFFECTIVE DATE.—Rules, regulations, cost accounting standards,  
17 and modifications of rules, regulations, and standards prescribed or amend-  
18 ed under this chapter have the full force and effect of law and become effec-  
19 tive within 120 days after publication in the Federal Register in final form,  
20 unless the Board determines that a longer period is necessary. The Board  
21 shall determine implementation dates for contractors and subcontractors.  
22 The date may not be later than the beginning of the second fiscal year of  
23 the contractor or subcontractor after the standard becomes effective.

24 (e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting  
25 standards, and modifications prescribed or amended under this chapter shall  
26 be accompanied by prefatory comments and by illustrations, if necessary.

27 (f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regula-  
28 tions for the implementation of cost accounting standards prescribed or in-  
29 terpreted under this section. The regulations shall be incorporated into the  
30 Federal Acquisition Regulation and shall require contractors and sub-  
31 contractors as a condition of contracting with the Government to—

32 (1) disclose in writing their cost accounting practices, including  
33 methods of distinguishing direct costs from indirect costs and the basis  
34 used for allocating indirect costs; and

35 (2) agree to a contract price adjustment, with interest, for any in-  
36 creased costs the Government pays the contractor or subcontractor be-  
37 cause of a change in the contractor's or subcontractor's cost accounting  
38 practices or a failure by the contractor or subcontractor to comply with  
39 applicable cost accounting standards.

1 (g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions  
 2 exercised under this section are not subject to sections 551, 553–559, and  
 3 701–706 of title 5.

4 **§ 1503. Contract price adjustment**

5 (a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Govern-  
 6 ment and a contractor or subcontractor fail to agree on a contract price ad-  
 7 justment, including whether the contractor or subcontractor has complied  
 8 with the applicable cost accounting standards, the disagreement will con-  
 9 stitute a dispute under chapter 69 of this title.

10 (b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken  
 11 under section 1502(f)(2) of this title shall be made, where applicable, on  
 12 relevant contracts between the Government and the contractor that are sub-  
 13 ject to the cost accounting standards so as to protect the Government from  
 14 payment, in the aggregate, of increased costs, as defined by the Cost Ac-  
 15 counting Standards Board. The Government may not recover costs greater  
 16 than the aggregate increased cost to the Government on the relevant con-  
 17 tracts subject to the price adjustment unless the contractor made a change  
 18 in its cost accounting practices of which it was aware or should have been  
 19 aware at the time of the price negotiation and which it failed to disclose  
 20 to the Government.

21 (c) INTEREST.—The interest rate applicable to a contract price adjust-  
 22 ment is the annual rate of interest established under section 6621 of the  
 23 Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest  
 24 accrues from the time payments of the increased costs were made to the  
 25 contractor or subcontractor to the time the Government receives full com-  
 26 pensation for the price adjustment.

27 **§ 1504. Effect on other standards and regulations**

28 (a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards,  
 29 waivers, exemptions, interpretations, modifications, rules, and regulations  
 30 prescribed by the Cost Accounting Standards Board under section 719 of  
 31 the Defense Production Act of 1950 (50 App. U.S.C. 2168)—

32 (1) remain in effect until amended, superseded, or rescinded by the  
 33 Board under this chapter; and

34 (2) are subject to this chapter in the same manner as if prescribed  
 35 by the Board under this chapter.

36 (b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation  
 37 or proposed regulation of an executive agency is not inconsistent with a cost  
 38 accounting standard prescribed or amended under this chapter, the Admin-  
 39 istrator for Federal Procurement Policy, under the authority in sections  
 40 1121, 1122(a)–(c)(1), 1125, 1126, 1130, 1131, and 2304 of this title, shall  
 41 rescind or deny the promulgation of the inconsistent regulation or proposed

1 regulation and take other appropriate action authorized under sections  
2 1121, 1122(a)–(c)(1), 1125, 1126, 1130, 1131, and 2304.

3 (c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are  
4 the subject of cost accounting standards prescribed under this chapter are  
5 not subject to regulations established by another executive agency that dif-  
6 fer from those standards with respect to the measurement, assignment, and  
7 allocation of those costs.

8 **§ 1505. Examinations**

9 To determine whether a contractor or subcontractor has complied with  
10 cost accounting standards prescribed under this chapter and has followed  
11 consistently the contractor’s or subcontractor’s disclosed cost accounting  
12 practices, an authorized representative of the head of the agency concerned,  
13 of the offices of inspector general established under the Inspector General  
14 Act of 1978 (5 App. U.S.C.), or of the Comptroller General may examine  
15 and copy documents, papers, or records of the contractor or subcontractor  
16 relating to compliance with the standards.

17 **§ 1506. Authorization of appropriations**

18 Necessary amounts may be appropriated to carry out this chapter.

19 **CHAPTER 17—AGENCY RESPONSIBILITIES AND**  
20 **PROCEDURES**

Sec.

- 1701. Cooperation with the Administrator.
- 1702. Chief Acquisition Officers and senior procurement executives.
- 1703. Acquisition workforce.
- 1704. Advocates for competition.
- 1705. Personnel evaluation.
- 1706. Publication of proposed regulations.
- 1707. Procurement notice.
- 1708. Contracting functions performed by Federal personnel.
- 1709. Value engineering.
- 1710. Record requirements.
- 1711. Procurement data.

21 **§ 1701. Cooperation with the Administrator**

22 On the request of the Administrator for Federal Procurement Policy,  
23 each executive agency shall—

24 (1) make its services, personnel, and facilities available to the Office  
25 of Federal Procurement Policy to the greatest practicable extent for the  
26 performance of functions under this part; and

27 (2) except when prohibited by law, furnish to the Administrator, and  
28 give the Administrator access to, all information and records the Office  
29 possesses that the Administrator may determine to be necessary for the  
30 performance of the functions of the Office.

1    **§ 1702. Chief Acquisition Officers and senior procurement**  
2                    **executives**

3           (a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—  
4    The head of each executive agency described in section 901(b)(1) (other  
5    than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief  
6    Financial Officer appointed or designated under section 901(a) of title 31  
7    shall appoint or designate a non-career employee as Chief Acquisition Offi-  
8    cer for the agency.

9           (b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

10           (1) PRIMARY DUTY.—The primary duty of the Chief Acquisition Of-  
11           ficer is acquisition management.

12           (2) ADVICE AND ASSISTANCE.—The Chief Acquisition Officer shall  
13           advise and assist the head of the executive agency and other agency  
14           officials to ensure that the mission of the executive agency is achieved  
15           through the management of the agency’s acquisition activities.

16           (3) OTHER FUNCTIONS.—The functions of each Chief Acquisition  
17           Officer include—

18                   (A) monitoring the performance of acquisition activities and ac-  
19                   quisition programs of the executive agency, evaluating the per-  
20                   formance of those programs on the basis of applicable performance  
21                   measurements, and advising the head of the executive agency re-  
22                   garding the appropriate business strategy to achieve the mission  
23                   of the executive agency;

24                   (B) increasing the use of full and open competition in the acqui-  
25                   sition of property and services by the executive agency by estab-  
26                   lishing policies, procedures, and practices that ensure that the ex-  
27                   ecutive agency receives a sufficient number of sealed bids or com-  
28                   petitive proposals from responsible sources to fulfill the Federal  
29                   Government’s requirements (including performance and delivery  
30                   schedules) at the lowest cost or best value considering the nature  
31                   of the property or service procured;

32                   (C) increasing appropriate use of performance-based contracting  
33                   and performance specifications;

34                   (D) making acquisition decisions consistent with all applicable  
35                   laws and establishing clear lines of authority, accountability, and  
36                   responsibility for acquisition decisionmaking within the executive  
37                   agency;

38                   (E) managing the direction of acquisition policy for the execu-  
39                   tive agency, including implementation of the unique acquisition  
40                   policies, regulations, and standards of the executive agency;

1 (F) developing and maintaining an acquisition career manage-  
 2 ment program in the executive agency to ensure that there is an  
 3 adequate professional workforce; and

4 (G) as part of the strategic planning and performance evalua-  
 5 tion process required under section 306 of title 5 and sections  
 6 1105(a)(28), 1115, 1116, and 9703 of title 31—

7 (i) assessing the requirements established for agency per-  
 8 sonnel regarding knowledge and skill in acquisition resources  
 9 management and the adequacy of those requirements for fa-  
 10 cilitating the achievement of the performance goals estab-  
 11 lished for acquisition management;

12 (ii) developing strategies and specific plans for hiring,  
 13 training, and professional development to rectify a deficiency  
 14 in meeting those requirements; and

15 (iii) reporting to the head of the executive agency on the  
 16 progress made in improving acquisition management capa-  
 17 bility.

18 (c) SENIOR PROCUREMENT EXECUTIVE.—

19 (1) DESIGNATION.—The head of each executive agency shall des-  
 20 ignate a senior procurement executive.

21 (2) RESPONSIBILITY.—The senior procurement executive is respon-  
 22 sible for management direction of the procurement system of the execu-  
 23 tive agency, including implementation of the unique procurement poli-  
 24 cies, regulations, and standards of the executive agency.

25 (3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DES-  
 26 IGNATED.—For an executive agency for which a Chief Acquisition Offi-  
 27 cer has been appointed or designated under subsection (a), the head  
 28 of the executive agency shall—

29 (A) designate the Chief Acquisition Officer as the senior pro-  
 30 curement executive for the executive agency; or

31 (B) ensure that the senior procurement executive designated  
 32 under paragraph (1) reports directly to the Chief Acquisition Offi-  
 33 cer without intervening authority.

34 **§ 1703. Acquisition workforce**

35 (a) DESCRIPTION.—For purposes of this section, the acquisition work-  
 36 force of an agency consists of all employees serving in acquisition positions  
 37 listed in subsection (g)(1)(A).

38 (b) APPLICABILITY.—

39 (1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—This  
 40 section does not apply to an executive agency that is subject to chapter  
 41 87 of title 10.

1           (2) APPLICABILITY OF PROGRAMS.—The programs established by  
2           this section apply to the acquisition workforce of each executive agency.

3           (c) MANAGEMENT POLICIES.—

4           (1) DUTIES OF HEAD OF EXECUTIVE AGENCY.—

5           (A) ESTABLISH POLICIES AND PROCEDURES.—After consulta-  
6           tion with the Administrator for Federal Procurement Policy, the  
7           head of each executive agency shall establish policies and proce-  
8           dures for the effective management (including accession, edu-  
9           cation, training, career development, and performance incentives)  
10          of the acquisition workforce of the agency. The development of ac-  
11          quisition workforce policies under this section shall be carried out  
12          consistent with the merit system principles set forth in section  
13          2301(b) of title 5.

14          (B) ENSURE UNIFORM IMPLEMENTATION.—The head of each  
15          executive agency shall ensure that, to the maximum extent prac-  
16          ticable, acquisition workforce policies and procedures established  
17          are uniform in their implementation throughout the agency.

18          (2) DUTIES OF ADMINISTRATOR.—The Administrator shall issue  
19          policies to promote uniform implementation of this section by executive  
20          agencies, with due regard for differences in program requirements  
21          among agencies that may be appropriate and warranted in view of the  
22          agency mission. The Administrator shall coordinate with the Deputy  
23          Director for Management of the Office of Management and Budget to  
24          ensure that the policies are consistent with the policies and procedures  
25          established, and enhanced system of incentives provided, pursuant to  
26          section 5051(e) of the Federal Acquisition Streamlining Act of 1994  
27          (Public Law 103–355, 108 Stat. 3351). The Administrator shall evalu-  
28          ate the implementation of this section by executive agencies.

29          (d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXEC-  
30          UTIVE.—Subject to the authority, direction, and control of the head of an  
31          executive agency, the senior procurement executive of the agency shall carry  
32          out all powers, functions, and duties of the head of the agency with respect  
33          to implementing this section. The senior procurement executive shall ensure  
34          that the policies of the head of the executive agency established in accord-  
35          ance with this section are implemented throughout the agency.

36          (e) COLLECTING AND MAINTAINING INFORMATION.—The Administrator  
37          shall ensure that the heads of executive agencies collect and maintain stand-  
38          ardized information on the acquisition workforce related to implementing  
39          this section. To the maximum extent practicable, information requirements  
40          shall conform to standards the Director of the Office of Personnel Manage-  
41          ment establishes for the Central Personnel Data File.

1 (f) CAREER DEVELOPMENT.—

2 (1) CAREER PATHS.—

3 (A) IDENTIFICATION.—The head of each executive agency shall  
4 ensure that appropriate career paths for personnel who desire to  
5 pursue careers in acquisition are identified in terms of the edu-  
6 cation, training, experience, and assignments necessary for career  
7 progression to the most senior acquisition positions. The head of  
8 each executive agency shall make available information on those  
9 career paths.

10 (B) CRITICAL DUTIES AND TASKS.—For each career path, the  
11 head of each executive agency shall identify the critical acquisition-  
12 related duties and tasks in which, at minimum, employees of the  
13 agency in the career path shall be competent to perform at full  
14 performance grade levels. For this purpose, the head of the execu-  
15 tive agency shall provide appropriate coverage of the critical duties  
16 and tasks identified by the Director of the Federal Acquisition In-  
17 stitute.

18 (C) MANDATORY TRAINING AND EDUCATION.—For each career  
19 path, the head of each executive agency shall establish require-  
20 ments for the completion of course work and related on-the-job  
21 training in the critical acquisition-related duties and tasks of the  
22 career path. The head of each executive agency also shall encour-  
23 age employees to maintain the currency of their acquisition knowl-  
24 edge and generally enhance their knowledge of related acquisition  
25 management disciplines through academic programs and other  
26 self-developmental activities.

27 (2) PERFORMANCE INCENTIVES.—The head of each executive agency  
28 shall provide for an enhanced system of incentives to encourage excel-  
29 lence in the acquisition workforce that rewards performance of employ-  
30 ees who contribute to achieving the agency’s performance goals. The  
31 system of incentives shall include provisions that—

32 (A) relate pay to performance (including the extent to which the  
33 performance of personnel in the workforce contributes to achieving  
34 the cost goals, schedule goals, and performance goals established  
35 for acquisition programs pursuant to section 3104(b) of this title);  
36 and

37 (B) provide for consideration, in personnel evaluations and pro-  
38 motion decisions, of the extent to which the performance of per-  
39 sonnel in the workforce contributes to achieving the cost goals,  
40 schedule goals, and performance goals.

41 (g) QUALIFICATION REQUIREMENTS.—

1 (1) IN GENERAL.—Subject to paragraph (2), the Administrator  
2 shall—

3 (A) establish qualification requirements, including education re-  
4 quirements, for—

5 (i) entry-level positions in the General Schedule Con-  
6 tracting series (GS–1102);

7 (ii) senior positions in the General Schedule Contracting  
8 series (GS–1102);

9 (iii) all positions in the General Schedule Purchasing series  
10 (GS–1105); and

11 (iv) positions in other General Schedule series in which sig-  
12 nificant acquisition-related functions are performed; and

13 (B) prescribe the manner and extent to which the requirements  
14 shall apply to an individual serving in a position described in sub-  
15 paragraph (A) at the time the requirements are established.

16 (2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE AC-  
17 QUISSION WORKFORCE.—The Administrator shall establish qualifica-  
18 tion requirements and make prescriptions under paragraph (1) that are  
19 comparable to those established for the same or equivalent positions  
20 pursuant to chapter 87 of title 10 with appropriate modifications.

21 (3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit  
22 any requirement established or prescription made under paragraph (1)  
23 to the Director of the Office of Personnel Management for approval.  
24 The Director is deemed to have approved the requirement or prescrip-  
25 tion if the Director does not disapprove the requirement or prescription  
26 within 30 days after receiving it.

27 (h) EDUCATION AND TRAINING.—

28 (1) FUNDING LEVELS.—The head of an executive agency shall set  
29 forth separately the funding levels requested for educating and training  
30 the acquisition workforce in the budget justification documents sub-  
31 mitted in support of the President’s budget submitted to Congress  
32 under section 1105 of title 31.

33 (2) TUITION ASSISTANCE.—The head of an executive agency may  
34 provide tuition reimbursement in education (including a full-time  
35 course of study leading to a degree) in accordance with section 4107  
36 of title 5 for personnel serving in acquisition positions in the agency.

37 (3) RESTRICTED OBLIGATION.—Amounts appropriated for education  
38 and training under this section may not be obligated for another pur-  
39 pose.

40 (i) TRAINING FUND.—

1 (1) PURPOSES.—The purposes of this subsection are to ensure that  
2 the Federal acquisition workforce—

3 (A) adapts to fundamental changes in the nature of Federal  
4 Government acquisition of property and services associated with  
5 the changing roles of the Government; and

6 (B) acquires new skills and a new perspective to enable it to  
7 contribute effectively in the changing environment of the 21st cen-  
8 tury.

9 (2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an ac-  
10 quisition workforce training fund. The Administrator of General Serv-  
11 ices manages the fund through the Federal Acquisition Institute to  
12 support the training of the acquisition workforce of the executive agen-  
13 cies other than the Department of Defense. The Administrator of Gen-  
14 eral Services shall consult with the Administrator for Federal Procure-  
15 ment Policy in managing the fund.

16 (3) CREDITS TO FUND.—Five percent of the fees collected by execu-  
17 tive agencies (other than the Department of Defense) under the fol-  
18 lowing contracts shall be credited to the fund:

19 (A) Governmentwide task and delivery-order contracts entered  
20 into under sections 4103 and 4105 of this title.

21 (B) Governmentwide contracts for the acquisition of information  
22 technology as defined in section 11101 of title 40 and multiagency  
23 acquisition contracts for that technology authorized by section  
24 11314 of title 40.

25 (C) multiple-award schedule contracts entered into by the Ad-  
26 ministrator of General Services.

27 (4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an  
28 executive agency that administers a contract described in paragraph (3)  
29 shall remit to the General Services Administration the amount required  
30 to be credited to the fund with respect to the contract at the end of  
31 each quarter of the fiscal year.

32 (5) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Ad-  
33 ministrator of General Services, through the Office of Federal Acquisi-  
34 tion Policy, shall ensure that amounts collected for training under this  
35 subsection are not used for a purpose other than the purpose specified  
36 in paragraph (1).

37 (6) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDU-  
38 CATION AND TRAINING.—Amounts credited to the fund are in addition  
39 to amounts requested and appropriated for education and training re-  
40 ferred to in subsection (h)(1).

1 (7) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund re-  
 2 main available to be expended only in the fiscal year for which they  
 3 are credited and the two succeeding fiscal years.

4 (8) EXCEPTION.—This subsection does not apply to the acquisition  
 5 workforce of the Department of Defense. Fees charged to the Depart-  
 6 ment of Defense under contracts covered by this subsection shall be re-  
 7 duced by five percent to reflect the Department’s nonparticipation in  
 8 the fund.

9 (9) EXPIRATION.—This subsection ceases to be effective five years  
 10 after November 24, 2003.

11 (j) RECRUITMENT PROGRAM.—

12 (1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections  
 13 3304, 5333, and 5753 of title 5, the head of a department or agency  
 14 of the Federal Government (other than the Secretary of Defense) may  
 15 determine, under regulations prescribed by the Office of Personnel  
 16 Management, that certain Federal acquisition positions (as described in  
 17 subsection (g)(1)(A)) are shortage category positions in order to use  
 18 the authorities in those sections to recruit and appoint highly qualified  
 19 individuals directly to those positions in the department or agency.

20 (2) REPORT.—Not later than March 31, 2007, the Director of the  
 21 Office of Personnel Management, in consultation with the Adminis-  
 22 trator for Federal Procurement Policy, shall submit to Congress a re-  
 23 port on the implementation of this subsection. The report shall in-  
 24 clude—

25 (A) a list of the departments and agencies that exercised the au-  
 26 thority provided in this subsection and whether the exercise of the  
 27 authority was carried out in accordance with the regulations of the  
 28 Office;

29 (B) the Director’s assessment of the efficacy of the exercise of  
 30 the authority provided in this subsection in attracting employees  
 31 with unusually high qualifications to the acquisition workforce;  
 32 and

33 (C) recommendations the Director considers appropriate on  
 34 whether the authority to carry out the program should be ex-  
 35 tended.

36 (3) TERMINATION OF AUTHORITY.—The head of a department or  
 37 agency may not appoint an individual to a position of employment  
 38 under this subsection after September 30, 2007.

39 **§ 1704. Advocates for competition**

40 (a) ESTABLISHMENT AND DESIGNATION.—

1           (1) ESTABLISHMENT.—Each executive agency shall have an advocate  
2 for competition.

3           (2) DESIGNATION.—The head of each executive agency shall—

4               (A) designate for the executive agency and for each procuring  
5 activity of the executive agency one officer or employee serving in  
6 a position authorized for the executive agency on July 18, 1984  
7 (other than the senior procurement executive designated pursuant  
8 to section 1702(c) of this title) to serve as the advocate for com-  
9 petition;

10              (B) not assign those officers or employees duties or responsibil-  
11 ities that are inconsistent with the duties and responsibilities of  
12 the advocates for competition; and

13              (C) provide those officers or employees with the staff or assist-  
14 ance necessary to carry out the duties and responsibilities of the  
15 advocate for competition, such as individuals who are specialists  
16 in engineering, technical operations, contract administration, fi-  
17 nancial management, supply management, and utilization of small  
18 and disadvantaged business concerns.

19           (b) DUTIES AND FUNCTIONS.—The advocate for competition of an execu-  
20 tive agency—

21               (1) is responsible for challenging barriers to, and promoting full and  
22 open competition in, the procurement of property and services by the  
23 executive agency;

24               (2) shall review the procurement activities of the executive agency;

25               (3) shall identify and report to the senior procurement executive of  
26 the executive agency—

27                   (A) opportunities and actions taken to achieve full and open  
28 competition in the procurement activities of the executive agency;  
29 and

30                   (B) a condition or action which has the effect of unnecessarily  
31 restricting competition in the procurement actions of the executive  
32 agency;

33               (4) shall prepare and transmit to the senior procurement executive  
34 an annual report describing—

35                   (A) the advocate's activities under this section;

36                   (B) new initiatives required to increase competition; and

37                   (C) remaining barriers to full and open competition;

38               (5) shall recommend to the senior procurement executive—

39                   (A) goals and the plans for increasing competition on a fiscal  
40 year basis; and

1 (B) a system of personal and organizational accountability for  
 2 competition, which may include the use of recognition and awards  
 3 to motivate program managers, contracting officers, and others in  
 4 authority to promote competition in procurement programs; and

5 (6) shall describe other ways in which the executive agency has em-  
 6 phasized competition in programs for procurement training and re-  
 7 search.

8 (c) RESPONSIBILITIES.—The advocate for competition for each procuring  
 9 activity is responsible for promoting full and open competition, promoting  
 10 the acquisition of commercial items, and challenging barriers to acquisition,  
 11 including unnecessarily restrictive statements of need, unnecessarily detailed  
 12 specifications, and unnecessarily burdensome contract clauses.

### 13 **§ 1705. Personnel evaluation**

14 The head of each executive agency subject to part C of this subtitle shall  
 15 ensure, with respect to the employees of that agency whose primary duties  
 16 and responsibilities pertain to the award of contracts subject to the provi-  
 17 sions of the Small Business and Federal Procurement Competition En-  
 18 hancement Act of 1984 (Public Law 98–577, 98 Stat. 3066), that the per-  
 19 formance appraisal system applicable to those employees affords appropriate  
 20 recognition to, among other factors, efforts to—

21 (1) increase competition and achieve cost savings through the elimi-  
 22 nation of procedures that unnecessarily inhibit full and open competi-  
 23 tion;

24 (2) further the purposes of the Small Business and Federal Procure-  
 25 ment Competition Enhancement Act of 1984 (Public Law 98–577, 98  
 26 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public  
 27 Law 98–525, 98 Stat. 2588); and

28 (3) further other objectives and purposes of the Federal acquisition  
 29 system authorized by law.

### 30 **§ 1706. Publication of proposed regulations**

31 (a) COVERED POLICIES, REGULATIONS, PROCEDURES, AND FORMS.—

32 (1) REQUIRED COMMENT PERIOD.—Except as provided in subsection  
 33 (d), a procurement policy, regulation, procedure, or form (including an  
 34 amendment or modification to a policy, regulation, procedure, or form)  
 35 may not take effect until 60 days after it is published for public com-  
 36 ment in the Federal Register pursuant to subsection (b) if it—

37 (A) relates to the expenditure of appropriated amounts; and

38 (B)(i) has a significant effect beyond the internal operating pro-  
 39 cedures of the agency issuing the policy, regulation, procedure, or  
 40 form; or

1 (ii) has a significant cost or administrative impact on contrac-  
2 tors or offerors.

3 (2) EXCEPTION.—A policy, regulation, procedure, or form may take  
4 effect earlier than 60 days after the publication date when there are  
5 compelling circumstances for the earlier effective date, but the effective  
6 date may not be less than 30 days after the publication date.

7 (b) PUBLICATION IN FEDERAL REGISTER AND COMMENT PERIOD.—Sub-  
8 ject to subsection (c), the head of the agency shall have published in the  
9 Federal Register a notice of the proposed procurement policy, regulation,  
10 procedure, or form and provide for a public comment period for receiving  
11 and considering the views of all interested parties on the proposal. The  
12 length of the comment period may not be less than 30 days.

13 (c) CONTENTS OF NOTICE.—Notice of a proposed procurement policy,  
14 regulation, procedure, or form prepared for publication in the Federal Reg-  
15 ister shall include—

16 (1) the text of the proposal or, if it is impracticable to publish the  
17 full text of the proposal, a summary of the proposal and a statement  
18 specifying the name, address, and telephone number of the officer or  
19 employee of the executive agency from whom the full text may be ob-  
20 tained; and

21 (2) a request for interested parties to submit comments on the pro-  
22 posal and the name and address of the officer or employee of the Gov-  
23 ernment designated to receive the comments.

24 (d) WAIVER.—The requirements of subsections (a) and (b) may be waived  
25 by the officer authorized to issue a procurement policy, regulation, proce-  
26 dure, or form if urgent and compelling circumstances make compliance with  
27 the requirements impracticable.

28 (e) EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.—

29 (1) TEMPORARY BASIS.—A procurement policy, regulation, proce-  
30 dure, or form for which the requirements of subsections (a) and (b)  
31 are waived under subsection (d) is effective on a temporary basis if—

32 (A) a notice of the policy, regulation, procedure, or form is pub-  
33 lished in the Federal Register and includes a statement that the  
34 policy, regulation, procedure, or form is temporary; and

35 (B) provision is made for a public comment period of 30 days  
36 beginning on the date on which the notice is published.

37 (2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After con-  
38 sidering the comments received, the head of the agency waiving the re-  
39 quirements of subsections (a) and (b) under subsection (d) may issue  
40 the final procurement policy, regulation, procedure, or form.

1 **§ 1707. Procurement notice**

2 (a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—

3 (1) an executive agency intending to solicit bids or proposals for a  
4 contract for property or services for a price expected to exceed  
5 \$10,000, but not to exceed \$25,000, shall post, for not less than 10  
6 days, in a public place at the contracting office issuing the solicitation  
7 a notice of solicitation described in subsection (c);

8 (2) an executive agency shall publish a notice of solicitation described  
9 in subsection (c) if the agency intends to—

10 (A) solicit bids or proposals for a contract for property or serv-  
11 ices for a price expected to exceed \$25,000; or

12 (B) place an order, expected to exceed \$25,000, under a basic  
13 agreement, basic ordering agreement, or similar arrangement; and

14 (3) an executive agency awarding a contract for property or services  
15 for a price exceeding \$25,000, or placing an order exceeding \$25,000  
16 under a basic agreement, basic ordering agreement, or similar arrange-  
17 ment, shall furnish for publication by the Secretary of Commerce a no-  
18 tice announcing the award or order if there is likely to be a subcontract  
19 under the contract or order.

20 (b) EXEMPTIONS.—

21 (1) IN GENERAL.—A notice is not required under subsection (a) if—

22 (A) the proposed procurement is for an amount not greater  
23 than the simplified acquisition threshold and is to be conducted  
24 by—

25 (i) using widespread electronic public notice of the solicita-  
26 tion in a form that allows convenient and universal user ac-  
27 cess through a single, Federal Government-wide point of  
28 entry; and

29 (ii) permitting the public to respond to the solicitation elec-  
30 tronically;

31 (B) the notice would disclose the executive agency's needs and  
32 disclosure would compromise national security;

33 (C) the proposed procurement would result from acceptance  
34 of—

35 (i) an unsolicited proposal that demonstrates a unique and  
36 innovative research concept and publication of a notice of the  
37 unsolicited research proposal would disclose the originality of  
38 thought or innovativeness of the proposal or would disclose  
39 proprietary information associated with the proposal; or

40 (ii) a proposal submitted under section 9 of the Small  
41 Business Act (15 U.S.C. 638);

1 (D) the procurement is made against an order placed under a  
 2 requirements contract, a task order contract, or a delivery order  
 3 contract;

4 (E) the procurement is made for perishable subsistence supplies;

5 (F) the procurement is for utility services, other than tele-  
 6 communication services, and only one source is available;

7 (G) the procurement is for the services of an expert for use in  
 8 any litigation or dispute (including any reasonably foreseeable liti-  
 9 gation or dispute) involving the Government in a trial, hearing, or  
 10 proceeding before a court, administrative tribunal, or agency, or  
 11 in any part of an alternative dispute resolution process, whether  
 12 or not the expert is expected to testify, or

13 (H) the procurement is by the Secretary of Homeland Security  
 14 pursuant to the special procedures provided in section 833(c) of  
 15 the Homeland Security Act of 2002 (6 U.S.C. 393(c)).

16 (2) CERTAIN PROCUREMENTS.—The requirements of subsection  
 17 (a)(2) do not apply to a procurement—

18 (A) under conditions described in paragraph (2), (3), (4), (5),  
 19 or (7) of section 3303(a) of this title or paragraph (2), (3), (4),  
 20 (5), or (7) of section 2304(c) of title 10; or

21 (B) for which the head of the executive agency makes a deter-  
 22 mination in writing, after consultation with the Administrator for  
 23 Federal Procurement Policy and the Administrator of the Small  
 24 Business Administration, that it is not appropriate or reasonable  
 25 to publish a notice before issuing a solicitation.

26 (c) CONTENTS OF NOTICE.—Each notice of solicitation required by clause  
 27 (1) or (2) of subsection (a) shall include—

28 (1) an accurate description of the property or services to be con-  
 29 tracted for, which description—

30 (A) shall not be unnecessarily restrictive of competition; and

31 (B) shall include, as appropriate, the agency nomenclature, Na-  
 32 tional Stock Number or other part number and a brief description  
 33 of the item's form, fit, or function, physical dimensions, and pre-  
 34 dominant material of manufacture, or similar information that will  
 35 assist a prospective contractor to make an informed business judg-  
 36 ment as to whether a copy of the solicitation should be requested;

37 (2) provisions that—

38 (A)(i) state whether the technical data required to respond to  
 39 the solicitation will not be furnished as part of the solicitation; and

40 (ii) identify the source in the Government, if any, from which  
 41 the technical data may be obtained; and

1 (B)(i) state whether an offeror or its product or service must  
 2 meet a qualification requirement in order to be eligible for award;  
 3 and, if so

4 (ii) identify the office from which the qualification requirement  
 5 may be obtained;

6 (3) the name, business address, and telephone number of the con-  
 7 tracting officer;

8 (4) a statement that all responsible sources may submit a bid, pro-  
 9 posal, or quotation (as appropriate) that the agency shall consider;

10 (5) in the case of a procurement using procedures other than com-  
 11 petitive procedures, a statement of the reason justifying the use of  
 12 those procedures and the identity of the intended source; and

13 (6) in the case of a contract in an amount estimated to be greater  
 14 than \$25,000 but not greater than the simplified acquisition threshold,  
 15 or a contract for the procurement of commercial items using special  
 16 simplified procedures—

17 (A) a description of the procedures to be used in awarding the  
 18 contract; and

19 (B) a statement specifying the periods for prospective offerors  
 20 and the contracting officer to take the necessary preaward and  
 21 award actions.

22 (d) PUBLICATION OF NOTICE OF SOLICITATION OR AWARD.—

23 (1) NOTICE OF SOLICITATION.—

24 (A) MEANS OF PUBLICATION.—A notice of solicitation required  
 25 to be published under subsection (a) may be published—

26 (i) by electronic means that meets the requirements for ac-  
 27 cessibility under subparagraph (B); or

28 (ii) by the Secretary of Commerce in the Commerce Busi-  
 29 ness Daily.

30 (B) ACCESSIBILITY REQUIREMENTS MET.—A publication of a  
 31 notice of solicitation by electronic means meets the requirements  
 32 for accessibility if the notice is electronically accessible in a form  
 33 that allows convenient and universal user access through the single  
 34 Government-wide point of entry designated in the Federal Acquisi-  
 35 tion Regulation.

36 (2) SECRETARY OF COMMERCE.—The Secretary of Commerce shall  
 37 publish promptly in the Commerce Business Daily each notice of solici-  
 38 tation of award or order the Secretary receives under paragraph  
 39 (1)(A)(ii) or subsection (a)(3) for publication in the Commerce Busi-  
 40 ness Daily.

41 (e) TIME LIMITATIONS.—

1 (1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEAD-  
2 LINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency re-  
3 quired by subsection (a)(2) to publish a notice of solicitation may not—

4 (A) issue the solicitation earlier than 15 days after the date on  
5 which the notice is published; or

6 (B) in the case of a contract or order expected to be greater  
7 than the simplified acquisition threshold, establish a deadline for  
8 the submission of all bids or proposals in response to the notice  
9 required by subsection (a)(2) that—

10 (i) in the case of a solicitation for research and develop-  
11 ment, is earlier than 45 days after the date the notice re-  
12 quired for a bid or proposal for a contract described in sub-  
13 section (a)(2)(A) is published;

14 (ii) in the case of an order under a basic agreement, basic  
15 ordering agreement, or similar arrangement, is earlier than  
16 30 days after the date the notice required for an order de-  
17 scribed in subsection (a)(2)(B) is published; or

18 (iii) in any other case, is earlier than 30 days after the  
19 date the solicitation is issued.

20 (2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STAT-  
21 UTE.—An executive agency shall establish a deadline for the submis-  
22 sion of all bids or proposals in response to a solicitation for which a  
23 deadline is not provided by statute. Each deadline for the submission  
24 of offers shall afford potential offerors a reasonable opportunity to re-  
25 spond.

26 (3) FLEXIBLE DEADLINES.—The Administrator for Federal Procure-  
27 ment Policy shall prescribe regulations defining limited circumstances  
28 in which flexible deadlines can be used under paragraph (1) for the  
29 issuance of solicitations and the submission of bids or proposals for the  
30 procurement of commercial items.

31 (f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An exec-  
32 utive agency intending to solicit offers for a contract for which a notice of  
33 solicitation is required to be posted under subsection (a)(1) shall ensure that  
34 contracting officers consider each responsive offer timely received from an  
35 offeror.

36 (g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT  
37 OF FEE.—An executive agency shall make available to a business concern,  
38 or the authorized representative of a concern, the complete solicitation pack-  
39 age for any on-going procurement announced pursuant to a notice of solici-  
40 tation under subsection (a) of this section. An executive agency may require

1 the payment of a fee, not exceeding the actual cost of duplication, for a copy  
2 of the package.

3 **§ 1708. Contracting functions performed by Federal per-**  
4 **sonnel**

5 (a) COVERED PERSONNEL.—Personnel referred to in subsection (b) are—

6 (1) an employee, as defined in section 2105 of title 5;

7 (2) a member of the armed forces; and

8 (3) an individual assigned to a Federal agency pursuant to sub-  
9 chapter VI of chapter 33 of title 5.

10 (b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERV-  
11 ICES.—An executive agency may not pay an individual not described in sub-  
12 section (a) for services to conduct evaluations or analyses of any aspect of  
13 a proposal submitted for an acquisition unless personnel described in sub-  
14 section (a) with adequate training and capabilities to perform the evalua-  
15 tions and analyses are not readily available in the agency or another Federal  
16 agency. When administering this subsection, the head of each executive  
17 agency shall determine in accordance with standards and procedures pre-  
18 scribed in the Federal Acquisition Regulation whether—

19 (1) a sufficient number of personnel described in subsection (a) in  
20 the agency or another Federal agency are readily available to perform  
21 a particular evaluation or analysis for the head of the executive agency  
22 making the determination; and

23 (2) the readily available personnel have the training and capabilities  
24 necessary to perform the evaluation or analysis.

25 (c) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not af-  
26 fect the relationship between the Federal Government and a Federally fund-  
27 ed research and development center.

28 **§ 1709. Value engineering**

29 Each executive agency shall establish and maintain cost-effective proce-  
30 dures and processes for analyzing the functions of a program, project, sys-  
31 tem, product, item of equipment, building, facility, service, or supply of the  
32 agency. The analysis shall be—

33 (1) performed by qualified agency or contractor personnel; and

34 (2) directed at improving performance, reliability, quality, safety,  
35 and life cycle costs.

36 **§ 1710. Record requirements**

37 (a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall  
38 establish and maintain for five years a computer file, by fiscal year, con-  
39 taining unclassified records of all procurements greater than the simplified  
40 acquisition threshold in that fiscal year.

1 (b) CONTENTS.—The record established under subsection (a) shall in-  
2 clude, with respect to each procurement carried out using—

3 (1) competitive procedures—

4 (A) the date of contract award;

5 (B) information identifying the source to whom the contract was  
6 awarded;

7 (C) the property or services the Federal Government obtains  
8 under the procurement; and

9 (D) the total cost of the procurement; or

10 (2) procedures other than competitive procedures—

11 (A) the information described in subclauses (A)–(D) of clause  
12 (1);

13 (B) the reason under section 3303(a) of this title or section  
14 2304(e) of title 10 for using the procedures; and

15 (C) the identity of the organization or activity that conducted  
16 the procurement.

17 (c) SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN  
18 ONE BID OR PROPOSAL.—Information included in a record pursuant to  
19 subsection (b)(1) that relates to procurements resulting in the submission  
20 of a bid or proposal by only one responsible source shall be separately cat-  
21 egorized from the information relating to other procurements included in  
22 the record. The record of that information shall be designated “noncompeti-  
23 tive procurements using competitive procedures”.

24 (d) TRANSMISSION AND DATA SYSTEM ENTRY OF INFORMATION.—Infor-  
25 mation included in the record established and maintained under subsection  
26 (a) shall be transmitted to the Administrator of General Services and shall  
27 be entered in the Federal Procurement Data System referred to in section  
28 1122(a)(4) of this title.

29 **§ 1711. Procurement data**

30 (a) DEFINITIONS.—In this section—

31 (1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term  
32 “qualified HUBZone small business concern” has the meaning given  
33 that term in section 3(p) of the Small Business Act (15 U.S.C.  
34 632(p)).

35 (2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SO-  
36 CIALY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term  
37 “small business concern owned and controlled by socially and economi-  
38 cally disadvantaged individuals” has the meaning given that term in  
39 section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

40 (3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY  
41 WOMEN.—The term “small business concern owned and controlled by

1 women” has the meaning given that term in section 8(d) of the Small  
 2 Business Act (15 U.S.C. 637(d)) and section 204 of the Women’s  
 3 Business Ownership Act of 1988 (Public Law 100–533, 102 Stat.  
 4 9692).

5 (b) REPORTING.—Each Federal agency shall report to the Office of Fed-  
 6 eral Procurement Policy the number of qualified HUBZone small business  
 7 concerns, the number of small businesses owned and controlled by women,  
 8 and the number of small business concerns owned and controlled by socially  
 9 and economically disadvantaged businesses, by gender, that are first time  
 10 recipients of contracts from the agency. The Office shall take appropriate  
 11 action to ascertain for each fiscal year the number of those small businesses  
 12 that have newly entered the Federal market.

### 13 **CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES**

Sec.

1901. Simplified acquisition procedures.

1902. Procedures applicable to purchases below micro-purchase threshold.

1903. Special emergency procurement authority.

1904. Certain transactions for defense against attack.

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

1906. List of laws inapplicable to procurements of commercial items.

1907. List of laws inapplicable to procurements of commercially available off-the-shelf items.

#### 14 **§ 1901. Simplified acquisition procedures**

15 (a) WHEN PROCEDURES ARE TO BE USED.—To promote efficiency and  
 16 economy in contracting and to avoid unnecessary burdens for agencies and  
 17 contractors, the Federal Acquisition Regulation shall provide for special  
 18 simplified procedures for purchases of property and services for amounts—

19 (1) not greater than the simplified acquisition threshold; and

20 (2) greater than the simplified acquisition threshold but not greater  
 21 than \$5,000,000 with respect to which the contracting officer reason-  
 22 ably expects, based on the nature of the property or services sought  
 23 and on market research, that offers will include only commercial items.

24 (b) PROHIBITION ON DIVIDING PURCHASES.—A proposed purchase or  
 25 contract for an amount above the simplified acquisition threshold may not  
 26 be divided into several purchases or contracts for lesser amounts to use the  
 27 simplified acquisition procedures required by subsection (a).

28 (c) PROMOTION OF COMPETITION REQUIRED.—When using simplified ac-  
 29 quisition procedures, the head of an executive agency shall promote competi-  
 30 tion to the maximum extent practicable.

31 (d) CONSIDERATION OF OFFERS TIMELY RECEIVED.—The simplified ac-  
 32 quisition procedures contained in the Federal Acquisition Regulation shall  
 33 include a requirement that a contracting officer consider each responsive  
 34 offer timely received from an eligible offeror.

1 (e) REPORT.—Until October 1, 2004, procuring activities shall continue  
 2 to report under section 1710 of this title procurement awards of at least  
 3 \$25,000, but less than \$100,000, in conformity with the procedures for the  
 4 reporting of a contract award greater than \$25,000 that were in effect on  
 5 October 1, 1992.

6 (f) SPECIAL RULES FOR COMMERCIAL ITEMS.—The Federal Acquisition  
 7 Regulation shall provide that an executive agency using special simplified  
 8 procedures to purchase commercial items—

9 (1) shall publish a notice in accordance with section 1707 of this title  
 10 and, as provided in section 1707(e)(4) of this title, permit all respon-  
 11 sible sources to submit a bid, proposal, or quotation (as appropriate)  
 12 that the agency shall consider;

13 (2) may not conduct the purchase on a sole source basis unless the  
 14 need to do so is justified in writing and approved in accordance with  
 15 section 2304 of title 10 or sections 3106 and 3301–3304 of this title;  
 16 and

17 (3) shall include in the contract file a written description of the pro-  
 18 cedures used in awarding the contract and the number of offers re-  
 19 ceived.

20 **§ 1902. Procedures applicable to purchases below micro-pur-**  
 21 **chase threshold**

22 (a) DEFINITION.—For purposes of this section, the micro-purchase  
 23 threshold is \$2,500.

24 (b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICA-  
 25 BILITY OF CERTAIN AUTHORITY.—

26 (1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—When awarding a  
 27 contract with a price exceeding the micro-purchase threshold, the head  
 28 of each executive agency shall ensure that procuring activities of that  
 29 agency comply with the requirements of section 8(a) of the Small Busi-  
 30 ness Act (15 U.S.C. 637(a)), section 2323 of title 10, and section 7102  
 31 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–  
 32 355, 15 U.S.C. 644 note).

33 (2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority  
 34 under part 13.106(a)(1) of the Federal Acquisition Regulation (48  
 35 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make pur-  
 36 chases without securing competitive quotations does not apply to a pur-  
 37 chase with a price exceeding the micro-purchase threshold.

38 (c) NONAPPLICABILITY OF CERTAIN PROVISIONS.—An executive agency  
 39 purchase with an anticipated value of the micro-purchase threshold or less  
 40 is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j))  
 41 and chapter 83 of this title.

1 (d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not  
 2 greater than \$2,500 may be made without obtaining competitive quotations  
 3 if an authorized employee of an executive agency or an authorized member  
 4 of the armed forces determines that the price for the purchase is reasonable.

5 (e) EQUITABLE DISTRIBUTION.—Purchases not greater than \$2,500 shall  
 6 be distributed equitably among qualified suppliers.

7 (f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.—  
 8 This section shall be implemented through the Federal Acquisition Regula-  
 9 tion.

10 **§ 1903. Special emergency procurement authority**

11 (a) APPLICABILITY.—The authorities provided in subsections (b) and (c)  
 12 apply with respect to a procurement of property or services by or for an  
 13 executive agency that the head of the executive agency determines are to  
 14 be used—

15 (1) in support of a contingency operation (as defined in section  
 16 101(a) of title 10); or

17 (2) to facilitate the defense against or recovery from nuclear, biologi-  
 18 cal, chemical, or radiological attack against the United States.

19 (b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to  
 20 which this section applies under subsection (a)—

21 (1) the amount specified in section 1902(a), (d), and (e) shall be  
 22 deemed to be \$15,000;

23 (2) the term “simplified acquisition threshold” means—

24 (A) \$250,000 in the case of a contract to be awarded and per-  
 25 formed, or purchase to be made, in the United States; and

26 (B) \$500,000 in the case of a contract to be awarded and per-  
 27 formed, or purchase to be made, outside the United States; and

28 (3) the \$5,000,000 limitation in sections 1901(a)(2) and 3304(a)(2)  
 29 of this title and section 2304(g)(1)(B) of title 10 is deemed to be  
 30 \$10,000,000.

31 (c) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL  
 32 ITEM.—

33 (1) IN GENERAL.—The head of an executive agency carrying out a  
 34 procurement of property or a service to which this section applies under  
 35 subsection (a)(2) may treat the property or service as a commercial  
 36 item for the purpose of carrying out the procurement.

37 (2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR RE-  
 38 QUIREMENTS.—A contract in an amount of more than \$15,000,000  
 39 that is awarded on a sole source basis for an item or service treated  
 40 as a commercial item under paragraph (1) is not exempt from—

1 (A) cost accounting standards prescribed under section 1502 of  
2 this title; or

3 (B) cost or pricing data requirements (commonly referred to as  
4 truth in negotiating) under chapter 35 of this title or section  
5 2306a of title 10.

6 **§ 1904. Certain transactions for defense against attack**

7 (a) AUTHORITY.—

8 (1) IN GENERAL.—The head of an executive agency that engages in  
9 basic research, applied research, advanced research, and development  
10 projects that are necessary to the responsibilities of the executive agen-  
11 cy in the field of research and development and have the potential to  
12 facilitate defense against or recovery from terrorism or nuclear, biologi-  
13 cal, chemical, or radiological attack may exercise the same authority  
14 (subject to the same restrictions and conditions) with respect to the re-  
15 search and projects as the Secretary of Defense may exercise under  
16 section 2371 of title 10, except for subsections (b) and (f) of section  
17 2371.

18 (2) PROTOTYPE PROJECTS.—The head of an executive agency, under  
19 the authority of paragraph (1), may carry out prototype projects that  
20 meet the requirements of paragraph (1) in accordance with the require-  
21 ments and conditions provided for carrying out prototype projects  
22 under section 845 of the National Defense Authorization Act for Fiscal  
23 Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), including  
24 that, to the maximum extent practicable, competitive procedures shall  
25 be used when entering into agreements to carry out projects under sec-  
26 tion 845(a) and that the period of authority to carry out projects under  
27 section 845(a) terminates as provided in section 845(g) of the Act.

28 (3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying  
29 the requirements and conditions of section 845 of the Act under this  
30 subsection—

31 (A) section 845(c) shall apply with respect to prototype projects  
32 carried out under paragraph (2); and

33 (B) the Director of the Office of Management and Budget shall  
34 perform the functions of the Secretary of Defense under section  
35 845(d) of the Act.

36 (4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

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

1 (B) DEPARTMENT OF HOMELAND SECURITY.—Authority under  
 2 this subsection does not apply to the Secretary of Homeland Secu-  
 3 rity while section 391 of title 6 is in effect.

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

7 (c) ANNUAL REPORT.—The annual report of the head of an executive  
 8 agency that is required under section 2371(h) of title 10, as applied to the  
 9 head of the executive agency by subsection (a), shall be submitted to the  
 10 Committee on Governmental Affairs of the Senate and the Committee on  
 11 Government Reform of the House of Representatives.

12 (d) TERMINATION OF AUTHORITY.—The authority to carry out trans-  
 13 actions under subsection (a) terminates on September 30, 2008.

14 **§ 1905. List of provisions of laws inapplicable to contracts or**  
 15 **subcontracts not greater than simplified acquisi-**  
 16 **tion threshold**

17 (a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

18 (1) IN GENERAL.—The Federal Acquisition Regulation shall include  
 19 a list of provisions of laws that are inapplicable to contracts or sub-  
 20 contracts in amounts not greater than the simplified acquisition thresh-  
 21 old. A provision of law properly included on the list pursuant to para-  
 22 graph (2) does not apply to contracts or subcontracts in amounts not  
 23 greater than the simplified acquisition threshold that are made by an  
 24 executive agency. This section does not render a provision of law not  
 25 included on the list inapplicable to contracts and subcontracts in  
 26 amounts not greater than the simplified acquisition threshold.

27 (2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law  
 28 described in subsection (b) that is enacted after October 13, 1994, shall  
 29 be included on the list of inapplicable provisions of laws required by  
 30 paragraph (1) unless the Federal Acquisition Regulatory Council makes  
 31 a written determination that it would not be in the best interest of the  
 32 Federal Government to exempt contracts or subcontracts in amounts  
 33 not greater than the simplified acquisition threshold from the applica-  
 34 bility of the provision.

35 (b) COVERED LAW.—A provision of law referred to in subsection (a)(2)  
 36 is a provision of law that the Council determines sets forth policies, proce-  
 37 dures, requirements, or restrictions for the procurement of property or serv-  
 38 ices by the Government, except for a provision of law that—

39 (1) provides for criminal or civil penalties; or

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

4           (c) PETITION.—A person may petition the Administrator for Federal Pro-  
5           curement Policy to take appropriate action when a provision of law de-  
6           scribed in subsection (b) is not included on the list of inapplicable provisions  
7           of law as required by subsection (a) and the Council has not made a written  
8           determination pursuant to subsection (a)(2). The Administrator shall revise  
9           the Federal Acquisition Regulation to include the provision on the list of  
10          inapplicable provisions of law unless the Council makes a determination pur-  
11          suant to subsection (a)(2) within 60 days after the petition is received.

12          **§ 1906. List of laws inapplicable to procurements of commer-**  
13          **cial items**

14          (a) CONTRACTS.—

15               (1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Fed-  
16               eral Acquisition Regulation shall include a list of provisions of law that  
17               are inapplicable to contracts for the procurement of commercial items.  
18               A provision of law properly included on the list pursuant to paragraph  
19               (2) does not apply to purchases of commercial items by an executive  
20               agency. This section does not render a provision of law not included  
21               on the list inapplicable to contracts for the procurement of commercial  
22               items.

23               (2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law  
24               described in subsection (c) that is enacted after October 13, 1994, shall  
25               be included on the list of inapplicable provisions of law required by  
26               paragraph (1) unless the Federal Acquisition Regulatory Council makes  
27               a written determination that it would not be in the best interest of the  
28               Federal Government to exempt contracts for the procurement of com-  
29               mercial items from the applicability of the provision.

30          (b) SUBCONTRACTS.—

31               (1) DEFINITION.—In this subsection, the term “subcontract” in-  
32               cludes a transfer of commercial items between divisions, subsidiaries,  
33               or affiliates of a contractor or subcontractor.

34               (2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Fed-  
35               eral Acquisition Regulation shall include a list of provisions of law that  
36               are inapplicable to subcontracts under a contract or subcontract for the  
37               procurement of commercial items. A provision of law properly included  
38               on the list pursuant to paragraph (3) does not apply to those sub-  
39               contracts. This section does not render a provision of law not included  
40               on the list inapplicable to subcontracts under a contract for the pro-  
41               curement of commercial items.

1 (3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law  
 2 described in subsection (c) shall be included on the list of inapplicable  
 3 provisions of law required by paragraph (2) unless the Federal Acquisi-  
 4 tion Regulatory Council makes a written determination that it would  
 5 not be in the best interest of the Federal Government to exempt sub-  
 6 contracts under a contract for the procurement of commercial items  
 7 from the applicability of the provision.

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

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

17 (1) provides for criminal or civil penalties; or

18 (2) specifically refers to this section and provides that, notwith-  
 19 standing this section, it shall be applicable to contracts for the procure-  
 20 ment of commercial items.

21 (d) PETITION.—A person may petition the Administrator for Federal  
 22 Procurement Policy to take appropriate action when a provision of law de-  
 23 scribed in subsection (c) is not included on the list of inapplicable provisions  
 24 of law as required by subsection (a) or (b) and the Council has not made  
 25 a written determination pursuant to subsection (a)(2) or (b)(3). The Admin-  
 26 istrator shall revise the Federal Acquisition Regulation to include the provi-  
 27 sion on the list of inapplicable provisions of law unless the Council makes  
 28 a determination pursuant to subsection (a)(2) or (b)(3) within 60 days after  
 29 the petition is received.

30 **§ 1907. List of laws inapplicable to procurements of commer-**  
 31 **cially available off-the-shelf items**

32 (a) DEFINITION.—As used in this section, the term “commercially avail-  
 33 able off-the-shelf item”—

34 (1) means an item that—

35 (A) is a commercial item (as described in section 103 of this  
 36 title);

37 (B) is sold in substantial quantities in the commercial market-  
 38 place; and

39 (C) is offered to the Federal Government, without modification,  
 40 in the same form in which it is sold in the commercial market-  
 41 place; but

(2) does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702), such as agricultural products and petroleum products.

(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 for the procurement of commercially available off-the-shelf items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) LAWS TO BE INCLUDED.—A provision of law described in subsection (c) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator for Federal Procurement Policy makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision.

(3) OTHER AUTHORITIES OR RESPONSIBILITIES NOT AFFECTED.—This section does not modify, supersede, impair, or restrict authorities or responsibilities under—

(A) section 15 of the Small Business Act (15 U.S.C. 644); or

(B) bid protest procedures developed under the authority of—

(i) subchapter V of chapter 35 of title 31;

(ii) section 2305(e) and (f) of title 10; or

(iii) sections 3706 and 3707 of this title.

(c) COVERED LAW.—Except as provided in subsection (b)(3), a provision of law referred to in subsection (b)(1) is a provision of law that the Administrator determines imposes Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services on persons whom the Government has awarded contracts for the procurement of commercially available off-the-shelf items, 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 commercially available off-the-shelf items.

**CHAPTER 21—RESTRICTIONS ON OBTAINING AND  
DISCLOSING CERTAIN INFORMATION**

Sec.  
2101. Definitions.

2102. Prohibitions on disclosing and obtaining procurement information.  
 2103. Actions required of procurement officers when contacted regarding non-Federal employment.  
 2104. Prohibition on former official's acceptance of compensation from contractor.  
 2105. Penalties and administrative actions.  
 2106. Reporting information believed to constitute evidence of offense.  
 2107. Savings provisions.

1     **§ 2101. Definitions**

2     In this chapter—

3           (1) **CONTRACTING OFFICER.**—The term “contracting officer” means  
 4           an individual who, by appointment in accordance with applicable regu-  
 5           lations, may enter into a Federal agency procurement contract on be-  
 6           half of the Federal Government and to make determinations and find-  
 7           ings with respect to the contract.

8           (2) **CONTRACTOR BID OR PROPOSAL INFORMATION.**—The term “con-  
 9           tractor bid or proposal information” means any of the following infor-  
 10          mation submitted to a Federal agency as part of, or in connection with,  
 11          a bid or proposal to enter into a Federal agency procurement contract,  
 12          if that information previously has not been made available to the public  
 13          or disclosed publicly:

14           (A) Cost or pricing data (as defined in section 2306a(h) of title  
 15           10 with respect to procurements subject to that section and sec-  
 16           tion 3501 of this title with respect to procurements subject to that  
 17           section).

18           (B) Indirect costs and direct labor rates.

19           (C) Proprietary information about manufacturing processes, op-  
 20           erations, or techniques marked by the contractor in accordance  
 21           with applicable law or regulation.

22           (D) Information marked by the contractor as “contractor bid or  
 23           proposal information”, in accordance with applicable law or regu-  
 24           lation.

25          (3) **FEDERAL AGENCY.**—The term “Federal agency” has the mean-  
 26          ing given the term “federal agency” in section 102 of title 40.

27          (4) **FEDERAL AGENCY PROCUREMENT.**—The term “Federal agency  
 28          procurement” means a Federal agency acquiring goods or services (in-  
 29          cluding construction) from non-Federal sources by using competitive  
 30          procedures and appropriated amounts and awarding a contract.

31          (5) **OFFICIAL.**—The term “official” means—

32           (A) an officer, as defined in section 2104 of title 5;

33           (B) an employee, as defined in section 2105 of title 5; and

34           (C) a member of the uniformed services, as defined in section  
 35           2101(3) of title 5.

36          (6) **PROTEST.**—The term “protest” means a written objection by an  
 37          interested party to the award or proposed award of a Federal agency

1 procurement contract, pursuant to subchapter V of chapter 35 of title  
2 31.

3 (7) SOURCE SELECTION INFORMATION.—The term “source selection  
4 information” means any of the following information prepared for use  
5 by a Federal agency to evaluate a bid or proposal to enter into a Fed-  
6 eral agency procurement contract, if that information previously has  
7 not been made available to the public or disclosed publicly:

8 (A) Bid prices submitted in response to a Federal agency solici-  
9 tation for sealed bids, or lists of those bid prices before public bid  
10 opening.

11 (B) Proposed costs or prices submitted in response to a Federal  
12 agency solicitation, or lists of those proposed costs or prices.

13 (C) Source selection plans.

14 (D) Technical evaluation plans.

15 (E) Technical evaluations of proposals.

16 (F) Cost or price evaluations of proposals.

17 (G) Competitive range determinations that identify proposals  
18 that have a reasonable chance of being selected for award of a  
19 contract.

20 (H) Rankings of bids, proposals, or competitors.

21 (I) Reports and evaluations of source selection panels, boards,  
22 or advisory councils.

23 (J) Other information marked as “source selection information”  
24 based on a case-by-case determination by the head of the agency,  
25 the head’s designee, or the contracting officer that its disclosure  
26 would jeopardize the integrity or successful completion of the Fed-  
27 eral agency procurement to which the information relates.

28 **§ 2102. Prohibitions on disclosing and obtaining procure-**  
29 **ment information**

30 (a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

31 (1) IN GENERAL.—Except as provided by law, an individual de-  
32 scribed in paragraph (3) shall not knowingly disclose contractor bid or  
33 proposal information or source selection information before the award  
34 of a Federal agency procurement contract to which the information re-  
35 lates.

36 (2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to  
37 the restriction in paragraph (1), an employee of a private sector organi-  
38 zation assigned to an agency under chapter 37 of title 5 shall not  
39 knowingly disclose contractor bid or proposal information or source se-  
40 lection information during the three-year period after the employee’s  
41 assignment ends, except as provided by law.

1 (3) APPLICATION.—Paragraph (1) applies to an individual who—

2 (A)(i) is a present or former official of the Federal Government;

3 or

4 (ii) is acting or has acted for or on behalf of, or who is advising  
5 or has advised the Government with respect to, a Federal agency  
6 procurement; and

7 (B) by virtue of that office, employment, or relationship has or  
8 had access to contractor bid or proposal information or source se-  
9 lection information.

10 (b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—Except  
11 as provided by law, a person shall not knowingly obtain contractor bid or  
12 proposal information or source selection information before the award of a  
13 Federal agency procurement contract to which the information relates.

14 **§ 2103. Actions required of procurement officers when con-**  
15 **tacted regarding non-Federal employment**

16 (a) ACTIONS REQUIRED.—An agency official participating personally and  
17 substantially in a Federal agency procurement for a contract in excess of  
18 the simplified acquisition threshold who contacts or is contacted by a bidder  
19 or offeror in that Federal agency procurement regarding possible non-Fed-  
20 eral employment for that official shall—

21 (1) promptly report the contact in writing to the official’s supervisor  
22 and to the designated agency ethics official (or designee) of the agency  
23 in which the official is employed; and

24 (2)(A) reject the possibility of non-Federal employment; or

25 (B) disqualify himself or herself from further personal and substan-  
26 tial participation in that Federal agency procurement until the agency  
27 authorizes the official to resume participation in the procurement, in  
28 accordance with the requirements of section 208 of title 18 and appli-  
29 cable agency regulations on the grounds that—

30 (i) the person is no longer a bidder or offeror in that Federal  
31 agency procurement; or

32 (ii) all discussions with the bidder or offeror regarding possible  
33 non-Federal employment have terminated without an agreement or  
34 arrangement for employment.

35 (b) RETENTION OF REPORTS.—The agency shall retain each report re-  
36 quired by this section for not less than two years following the submission  
37 of the report. The reports shall be made available to the public on request,  
38 except that any part of a report that is exempt from the disclosure require-  
39 ments of section 552 of title 5 under section 552(b)(1) may be withheld  
40 from disclosure to the public.

1 (c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the  
2 penalties and administrative actions set forth in section 2105 of this title:

3 (1) An official who knowingly fails to comply with the requirements  
4 of this section.

5 (2) A bidder or offeror that engages in employment discussions with  
6 an official who is subject to the restrictions of this section, knowing  
7 that the official has not complied with clause (1) or (2) of subsection  
8 (a).

9 **§ 2104. Prohibition on former official's acceptance of com-**  
10 **pensation from contractor**

11 (a) PROHIBITION.—A former official of a Federal agency may not accept  
12 compensation from a contractor as an employee, officer, director, or consult-  
13 ant of the contractor within one year after the official—

14 (1) served, when the contractor was selected or awarded a contract,  
15 as the procuring contracting officer, the source selection authority, a  
16 member of the source selection evaluation board, or the chief of a fi-  
17 nancial or technical evaluation team in a procurement in which that  
18 contractor was selected for award of a contract in excess of  
19 \$10,000,000;

20 (2) served as the program manager, deputy program manager, or ad-  
21 ministrative contracting officer for a contract in excess of \$10,000,000  
22 awarded to that contractor; or

23 (3) personally made for the Federal agency a decision to—

24 (A) award a contract, subcontract, modification of a contract or  
25 subcontract, or a task order or delivery order in excess of  
26 \$10,000,000 to that contractor;

27 (B) establish overhead or other rates applicable to a contract for  
28 that contractor that is valued in excess of \$10,000,000;

29 (C) approve issuance of a contract payment in excess of  
30 \$10,000,000 to that contractor; or

31 (D) pay or settle a claim in excess of \$10,000,000 with that  
32 contractor.

33 (b) WHEN COMPENSATION MAY BE ACCEPTED.—Subsection (a) does not  
34 prohibit a former official of a Federal agency from accepting compensation  
35 from a division or affiliate of a contractor that does not produce the same  
36 or similar products or services as the entity of the contractor that is respon-  
37 sible for the contract referred to in clause (1), (2), or (3) of subsection (a).

38 (c) IMPLEMENTING REGULATIONS.—Regulations implementing this sec-  
39 tion shall include procedures for an official or former official of a Federal  
40 agency to request advice from the appropriate designated agency ethics offi-

1 cial regarding whether the official or former official is or would be precluded  
2 by this section from accepting compensation from a particular contractor.

3 (d) PERSONS SUBJECT TO PENALTIES.—The following are subject to the  
4 penalties and administrative actions set forth in section 2105 of this title:

5 (1) A former official who knowingly accepts compensation in viola-  
6 tion of this section.

7 (2) A contractor that provides compensation to a former official  
8 knowing that the official accepts the compensation in violation of this  
9 section.

10 **§ 2105. Penalties and administrative actions**

11 (a) CRIMINAL PENALTIES.—A person that violates section 2102 of this  
12 title to exchange information covered by section 2102 for anything of value  
13 or to obtain or give a person a competitive advantage in the award of a  
14 Federal agency procurement contract shall be fined as provided under title  
15 18, imprisoned for not more than five years, or both.

16 (b) CIVIL PENALTIES.—The Attorney General may bring a civil action in  
17 an appropriate district court of the United States against a person that vio-  
18 lates section 2102, 2103, or 2104 of this title. On proof of the conduct by  
19 a preponderance of the evidence—

20 (1) an individual is liable to the Federal Government for a civil pen-  
21 alty of not more than \$50,000 for each violation plus twice the amount  
22 of compensation that the individual received or offered for the prohib-  
23 ited conduct; and

24 (2) an organization is liable to the Government for a civil penalty  
25 of not more than \$500,000 for each violation plus twice the amount  
26 of compensation that the organization received or offered for the pro-  
27 hibited conduct.

28 (c) ADMINISTRATIVE ACTIONS.—

29 (1) TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.—A Fed-  
30 eral agency that receives information that a contractor or a person has  
31 violated section 2102, 2103, or 2104 of this title shall consider taking  
32 one or more of the following actions, as appropriate:

33 (A) Canceling the Federal agency procurement, if a contract has  
34 not yet been awarded.

35 (B) Rescinding a contract with respect to which—

36 (i) the contractor or someone acting for the contractor has  
37 been convicted for an offense punishable under subsection (a);  
38 or

39 (ii) the head of the agency that awarded the contract has  
40 determined, based on a preponderance of the evidence, that

1 the contractor or a person acting for the contractor has en-  
2 gaged in conduct constituting the offense.

3 (C) Initiating a suspension or debarment proceeding for the pro-  
4 tection of the Government in accordance with procedures in the  
5 Federal Acquisition Regulation.

6 (D) Initiating an adverse personnel action, pursuant to the pro-  
7 cedures in chapter 75 of title 5 or other applicable law or regula-  
8 tion.

9 (2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Fed-  
10 eral agency rescinds a contract pursuant to paragraph (1)(B), the Gov-  
11 ernment is entitled to recover, in addition to any penalty prescribed by  
12 law, the amount expended under the contract.

13 (3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For pur-  
14 poses of a suspension or debarment proceeding initiated pursuant to  
15 paragraph (1)(C), engaging in conduct constituting an offense under  
16 section 2102, 2103, or 2104 affects the present responsibility of a Gov-  
17 ernment contractor or subcontractor.

18 **§ 2106. Reporting information believed to constitute evi-**  
19 **dence of offense**

20 A person may not file a protest against the award or proposed award of  
21 a Federal agency procurement contract alleging a violation of section 2102,  
22 2103, or 2104 of this title, and the Comptroller General may not consider  
23 that allegation in deciding a protest, unless the person, no later than 14  
24 days after the person first discovered the possible violation, reported to the  
25 Federal agency responsible for the procurement the information that the  
26 person believed constitutes evidence of the offense.

27 **§ 2107. Savings provisions**

28 This chapter does not—

29 (1) restrict the disclosure of information to, or its receipt by, a per-  
30 son or class of persons authorized, in accordance with applicable agency  
31 regulations or procedures, to receive that information;

32 (2) restrict a contractor from disclosing its own bid or proposal in-  
33 formation or the recipient from receiving that information;

34 (3) restrict the disclosure or receipt of information relating to a Fed-  
35 eral agency procurement after it has been canceled by the Federal  
36 agency before contract award unless the Federal agency plans to re-  
37 sume the procurement;

38 (4) prohibit individual meetings between a Federal agency official  
39 and an offeror or potential offeror for, or a recipient of, a contract or  
40 subcontract under a Federal agency procurement, provided that unau-



1           (1) are implemented with uniformity throughout the agency, to the  
2 extent practicable;

3           (2) are implemented only after granting due consideration to the use  
4 or partial use, as appropriate, of existing electronic commerce and elec-  
5 tronic data interchange systems and infrastructures such as the Fed-  
6 eral acquisition computer network architecture known as FACNET;

7           (3) facilitate access to Federal Government procurement opportuni-  
8 ties, including opportunities for small business concerns, socially and  
9 economically disadvantaged small business concerns, and business con-  
10 cerns owned predominantly by women; and

11           (4) ensure that any notice of agency requirements or agency solicita-  
12 tion for contract opportunities is provided in a form that allows conven-  
13 ient and universal user access through a single, Government-wide point  
14 of entry.

15       (e) IMPLEMENTATION.—In carrying out the requirements of this section,  
16 the Administrator shall—

17           (1) issue policies to promote, to the maximum extent practicable,  
18 uniform implementation of this section by executive agencies, with due  
19 regard for differences in program requirements among agencies that  
20 may require departures from uniform procedures and processes in ap-  
21 propriate cases, when warranted because of the agency mission;

22           (2) ensure that the head of each executive agency complies with the  
23 requirements of subsection (d); and

24           (3) consult with the heads of appropriate Federal agencies with ap-  
25 plicable technical and functional expertise, including the Office of In-  
26 formation and Regulatory Affairs, the National Institute of Standards  
27 and Technology, the General Services Administration, and the Depart-  
28 ment of Defense.

29       (f) REPORT.—Not later than March 1, 2004, the Administrator shall sub-  
30 mit to Congress a report setting forth in detail the progress made in imple-  
31 menting the requirements of this section. The report shall include the fol-  
32 lowing:

33           (1) A strategic plan for the implementation of a Government-wide  
34 electronic commerce capability.

35           (2) An agency-by-agency summary of implementation of the require-  
36 ments of subsection (d), including timetables, as appropriate, address-  
37 ing when individual agencies will come into full compliance.

38           (3) A specific assessment of compliance with the requirement in sub-  
39 section (d) to provide universal public access through a single, Govern-  
40 ment-wide point of entry.

1 (4) An agency-by-agency summary of the volume and dollar value of  
2 transactions that were conducted using electronic commerce methods  
3 during the previous calendar year.

4 (5) A discussion of possible incremental changes to the electronic  
5 commerce capability referred to in subsection (d)(4) to increase the  
6 level of government contract information available to the private sector,  
7 including an assessment of the advisability of including contract award  
8 information in the electronic commerce functional standard.

9 **§ 2302. Rights in technical data**

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

13 (b) GENERAL EXTENT OF REGULATIONS.—

14 (1) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under  
15 subsection (a) may not impair a right of the Government or of a con-  
16 tractor with respect to a patent or copyright or another right in tech-  
17 nical data otherwise established by law.

18 (2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOV-  
19 ERNMENT.—With respect to executive agencies subject to part C of this  
20 subtitle, regulations prescribed under subsection (a) shall provide that  
21 the Government may not require a person that has developed a product  
22 or process offered or to be offered for sale to the public as a condition  
23 for the Government to procure the product or process, to provide to  
24 the Government technical data relating to the design, development, or  
25 manufacture of the product or process. This paragraph does not apply  
26 to data that may be necessary for the Government to operate and  
27 maintain the product or use the process if the Government obtains it  
28 as an element of performance under the contract.

29 (c) TECHNICAL DATA DEVELOPED WITH FEDERAL AMOUNTS.—

30 (1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise ex-  
31 pressly provided by Federal statute, with respect to executive agencies  
32 subject to part C of this subtitle, regulations prescribed under sub-  
33 section (a) shall provide that—

34 (A) the Government has unlimited rights in technical data de-  
35 veloped exclusively with Federal amounts if delivery of the data—

36 (i) was required as an element of performance under a con-  
37 tract; and

38 (ii) is needed to ensure the competitive acquisition of sup-  
39 plies or services that will be required in substantial quantities  
40 in the future; and

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

6           (2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOV-  
7           ERNMENT.—The requirements of paragraph (1) are in addition to and  
8           not in lieu of any other rights the Government may have pursuant to  
9           law.

10          (d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The  
11          following factors shall be considered in prescribing regulations under sub-  
12          section (a):

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

15               (A) exclusively with Federal amounts;

16               (B) exclusively at private expense; or

17               (C) in part with Federal amounts and in part at private ex-  
18           pense.

19           (2) The statement of congressional policy and objectives in section  
20           200 of title 35, the statement of purposes in section 2(b) of the Small  
21           Business Innovation Development Act of 1982 (Public Law 97–219, 15  
22           U.S.C. 638 note), and the declaration of policy in section 2 of the  
23           Small Business Act (15 U.S.C. 631).

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

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

31           (1) defining the respective rights of the Government and the con-  
32           tractor or subcontractor (at any tier) regarding technical data to be de-  
33           livered under the contract;

34           (2) specifying technical data to be delivered under the contract and  
35           schedules for delivery;

36           (3) establishing or referencing procedures for determining the ac-  
37           ceptability of technical data to be delivered under the contract;

38           (4) establishing separate contract line items for technical data to be  
39           delivered under the contract;

1 (5) to the maximum practicable extent, identifying, in advance of de-  
2 livery, technical data which is to be delivered with restrictions on the  
3 right of the Government to use the data;

4 (6) requiring the contractor to revise any technical data delivered  
5 under the contract to reflect engineering design changes made during  
6 the performance of the contract and affecting the form, fit, and func-  
7 tion of the items specified in the contract and to deliver the revised  
8 technical data to an agency within a time specified in the contract;

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

13 (8) establishing remedies to be available to the Government when  
14 technical data required to be delivered or made available under the con-  
15 tract is found to be incomplete or inadequate or to not satisfy the re-  
16 quirements of the contract concerning technical data; and

17 (9) authorizing the head of the agency to withhold payments under  
18 the contract (or exercise another remedy the head of the agency con-  
19 siders appropriate) during any period if the contractor does not meet  
20 the requirements of the contract pertaining to the delivery of technical  
21 data.

22 **§ 2303. Conflict of interest standards for consultants**

23 (a) CONTENT OF REGULATIONS.—The Administrator for Federal Pro-  
24 curement Policy shall prescribe Government-wide regulations that set  
25 forth—

26 (1) conflict of interest standards for persons who provide consulting  
27 services described in subsection (b); and

28 (2) procedures, including registration, certification, and enforcement  
29 requirements as may be appropriate, to promote compliance with the  
30 standards.

31 (b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by sub-  
32 section (a) apply to—

33 (1) advisory and assistance services provided to the Government to  
34 the extent necessary to identify and evaluate the potential for conflicts  
35 of interest that could be prejudicial to the interests of the United  
36 States;

37 (2) services related to support of the preparation or submission of  
38 bids and proposals for Federal contracts to the extent that inclusion  
39 of the services in the regulations is necessary to identify and evaluate  
40 the potential for conflicts of interest that could be prejudicial to the  
41 interests of the United States; and

1 (3) other services related to Federal contracts as specified in the reg-  
 2 ulations prescribed under subsection (a) to the extent necessary to  
 3 identify and evaluate the potential for conflicts of interest that could  
 4 be prejudicial to the interests of the United States.

5 (c) INTELLIGENCE ACTIVITIES EXEMPTION.—

6 (1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as de-  
 7 fined in section 3.4(e) of Executive Order No. 12333 or a comparable  
 8 definitional section in any successor order may be exempt from the reg-  
 9 ulations required by subsection (a).

10 (2) REPORT.—The Director of Central Intelligence shall report to  
 11 the Intelligence and Appropriations Committees of Congress each Jan-  
 12 uary 1, delineating the activities and organizations that have been ex-  
 13 empted under paragraph (1).

14 (d) PRESIDENTIAL DETERMINATION.—Before the regulations required by  
 15 subsection (a) are prescribed, the President shall determine if prescribing  
 16 the regulations will have a significantly adverse effect on the accomplish-  
 17 ment of the mission of the Defense Department or another Federal agency.  
 18 When the President determines that the regulations will have an adverse ef-  
 19 fect, the President shall report to the appropriate committees of the Senate  
 20 and the House of Representatives, stating in full the reasons for the deter-  
 21 mination. When the report is submitted, the requirement for the regulations  
 22 shall be null and void.

23 **§ 2304. Authority of Director of Office of Management and**  
 24 **Budget not affected**

25 This part does not limit the authorities and responsibilities of the Direc-  
 26 tor of the Office of Management and Budget in effect on December 1, 1983.

27 **§ 2305. Openness of meetings**

28 The Administrator for Federal Procurement Policy by regulation shall re-  
 29 quire that—

30 (1) formal meetings of the Office of Federal Procurement Policy, as  
 31 designated by the Administrator, for developing procurement policies  
 32 and regulations be open to the public; and

33 (2) public notice of each meeting be given not less than 10 days  
 34 prior to the meeting.

35 **§ 2306. Comptroller General's access to information**

36 The Administrator for Federal Procurement Policy and personnel in the  
 37 Office of Federal Procurement Policy shall furnish information the Comp-  
 38 troller General may require to discharge the responsibilities of the Comp-  
 39 troller General. For this purpose, the Comptroller General or his representa-  
 40 tives shall have access to all books, documents, papers, and records of the  
 41 Office.

**§ 2307. Modular contracting for information technology**

(a) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency’s need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(b) USE.—To the maximum extent practicable, the head of an executive agency should use modular contracting for an acquisition of a major system of information technology.

(c) PROVISIONS IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attaining those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(2) to the maximum extent practicable, a contract for an increment of an information technology acquisition should be awarded within 180 days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the solicitation resulting in award of the contract was issued.

**§ 2308. 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

1 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in  
2 section 3 of the Act (22 U.S.C. 6701)).

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

7 **§ 2309. Performance-based contracts or task orders for serv-**  
8 **ices to be treated as contracts for the procurement**  
9 **of commercial items**

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

14 (1) the value of the contract or task order is estimated not to exceed  
15 \$25,000,000;

16 (2) the contract or task order sets forth specifically each task to be  
17 performed and, for each task—

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

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

20 and

21 (C) contains, firm, fixed prices for specific tasks to be per-  
22 formed or outcomes to be achieved; and

23 (3) the source of the services provides similar services to the general  
24 public under terms and conditions similar to those offered to the Fed-  
25 eral Government.

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

31 (c) REPORT.—Not later than two years after November 24, 2003, the Di-  
32 rector of the Office of Management and Budget shall prepare and submit  
33 to the Committees on Governmental Affairs and on Armed Services of the  
34 Senate and the Committees on Government Reform and on Armed Services  
35 of the House of Representatives a report on the contracts or task orders  
36 treated as contracts for commercial items using the authority of this section.  
37 The report shall include data on the use of the authority, both government-  
38 wide and for each department and agency.

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

PART C—PROCUREMENT  
CHAPTER 31—GENERAL

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Sec.

- 3101. Definitions.
- 3102. Applicability.
- 3103. Delegation and assignment of powers, functions, and responsibilities.
- 3104. Acquisition programs.
- 3105. Small business concerns.
- 3106. New contracts and grants and merit-based selection procedures.
- 3107. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this part.

**§ 3101. Definitions**

In this part—

(1) AGENCY HEAD.—The term “agency head” means the head or any assistant head of an executive agency, and may at the option of the Administrator of General Services include the chief official of any principal organizational unit of the General Services Administration.

(2) COMPETITIVE PROCEDURES.—The term “competitive procedures” means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes—

(A) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(B) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of those proposals;

(C) the procedures established by the Administrator for the multiple awards schedule program of the Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Government;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for those procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Act (15 U.S.C. 638).

(3) SIMPLIFIED ACQUISITION THRESHOLD.—

(A) IN GENERAL.—The term “simplified acquisition threshold” has the meaning provided that term in section 133 of this title,

1           except that, in the case of a contract to be awarded and per-  
 2           formed, or purchase to be made, outside the United States in sup-  
 3           port of a contingency operation or a humanitarian or peacekeeping  
 4           operation, the term means an amount equal to two times the  
 5           amount specified for that term in section 133.

6           (B) SPECIFIC DEFINITIONS RELATING TO SIMPLIFIED ACQUI-  
 7           TION THRESHOLD.—In subclause (a)—

8                 (i) CONTINGENCY OPERATION.—The term “contingency op-  
 9                 eration” has the meaning given that term in section 101(a)  
 10                of title 10.

11               (ii) HUMANITARIAN OR PEACEKEEPING OPERATION.—The  
 12               term “humanitarian or peacekeeping operation” means a  
 13               military operation in support of the provision of humanitarian  
 14               or foreign disaster assistance or in support of a peacekeeping  
 15               operation under chapter VI or VII of the Charter of the  
 16               United Nations. The term does not include routine training,  
 17               force rotation, or stationing.

## 18   **§ 3102. Applicability**

19           (a) IN GENERAL.—An executive agency shall make purchases and con-  
 20           tracts for property and services in accordance with this part and imple-  
 21           menting regulations of the Administrator of General Services.

22           (b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

23               (1) SIMPLIFIED ACQUISITION THRESHOLD.—

24                   (A) DEFINITION.—For purposes of an acquisition by an execu-  
 25                   tive agency, the simplified acquisition threshold is as specified in  
 26                   section 133 of this title.

27                   (B) INAPPLICABLE LAWS.—A law properly listed in the Federal  
 28                   Acquisition Regulation pursuant to section 1905 of this title does  
 29                   not apply to or with respect to a contract or subcontract that is  
 30                   not greater than the simplified acquisition threshold.

31               (2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition  
 32               procedures contained in the Federal Acquisition Regulation pursuant to  
 33               section 1901 of this title apply in executive agencies as provided in sec-  
 34               tion 1901.

35           (c) EXCEPTIONS.—

36               (1) IN GENERAL.—This part does not apply—

37                   (A) to the Department of Defense, the Coast Guard, and the  
 38                   National Aeronautics and Space Administration; or

39                   (B) except as provided in paragraph (2), when this part is made  
 40                   inapplicable pursuant to law.

1           (2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING,  
 2           OPENING OF BIDS, AND LENGTH OF CONTRACT.—Sections 6101, 6103,  
 3           and 6304 of this title do not apply to the procurement of property or  
 4           services made by an executive agency pursuant to this part. However,  
 5           when this part is made inapplicable by any law, sections 6101 and  
 6           6103 apply in the absence of authority conferred by statute to procure  
 7           without advertising or without regard to section 6101. A law that au-  
 8           thorizes an executive agency (other than an executive agency exempted  
 9           from this part by this subsection) to procure property or services with-  
 10          out advertising or without regard to section 6101 is deemed to author-  
 11          ize the procurement pursuant to the provisions of this part relating to  
 12          procedures other than sealed-bid procedures.

13       **§ 3103. Delegation and assignment of powers, functions, and**  
 14   **responsibilities**

15           (a) IN GENERAL.—Except to the extent expressly prohibited by another  
 16           law, the head of an executive agency may delegate to another officer or offi-  
 17           cial of that agency any power under this part.

18           (b) PROCUREMENTS FOR OR WITH ANOTHER AGENCY.—Subject to sub-  
 19           section (a), to facilitate the procurement of property and services covered  
 20           by this part by an executive agency for another executive agency, and to  
 21           facilitate joint procurement by executive agencies—

22                   (1) the head of an executive agency may delegate functions and as-  
 23                   sign responsibilities relating to procurement to any officer or employee  
 24                   within the agency;

25                   (2) the heads of two or more executive agencies, consistent with sec-  
 26                   tion 1535 of title 31 and regulations prescribed under section 1074 of  
 27                   the Federal Acquisition Streamlining Act of 1994 (Public Law 103–  
 28                   355, 31 U.S.C. 1535 note), may agree to delegate procurement func-  
 29                   tions and assign procurement responsibilities from one executive agency  
 30                   to another of those executive agencies or to an officer or civilian em-  
 31                   ployee of another of those executive agencies; and

32                   (3) the heads of two or more executive agencies may establish joint  
 33                   or combined offices to exercise procurement functions and responsibil-  
 34                   ities.

35       **§ 3104. Acquisition programs**

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

40           (b) ESTABLISHMENT OF GOALS.—

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

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

7 (c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—When it is nec-  
8 essary to implement the policy set out in subsection (a), the head of an ex-  
9 ecutive agency shall—

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

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

15 **§ 3105. Small business concerns**

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

19 **§ 3106. New contracts and grants and merit-based selection**  
20 **procedures**

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

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

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

25 or

26 (B) a new grant for research, development, use, or evaluation  
27 to a non-Government entity; and

28 (2) a program, project, or technology identified in legislation be pro-  
29 cured through merit-based selection procedures.

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

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

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

38 (c) REQUIREMENTS FOR AWARDED NEW CONTRACT OR NEW GRANT.—  
39 A provision of law does not require a new contract or new grant be awarded  
40 to a specified non-Government entity unless the provision of law specifi-  
41 cally—

- 1 (1) refers to this section;  
 2 (2) identifies the particular non-Government entity involved; and  
 3 (3) states that the award to that entity is required by the provision  
 4 of law in contravention of the policy set forth in subsection (a).

5 (d) EXCEPTION.—This section does not apply to a contract or grant that  
 6 calls on the National Academy of Sciences to investigate, examine, or experi-  
 7 ment on a subject of science or art of significance to an executive agency  
 8 and to report on those matters to Congress or an agency of the Govern-  
 9 ment.

10 **§ 3107. Erection, repair, or furnishing of public buildings**  
 11 **and improvements not authorized, and certain**  
 12 **contracts not permitted, by this part**

13 This part does not—

- 14 (1) authorize the erection, repair, or furnishing of a public building  
 15 or public improvement; or  
 16 (2) permit a contract for the construction or repair of a building,  
 17 road, sidewalk, sewer, main, or similar items using procedures other  
 18 than sealed-bid procedures under section 3301(b)(1)(A) of this title if  
 19 the conditions set forth in section 3301(b)(1)(A) apply or the contract  
 20 is to be performed outside the United States.

21 **CHAPTER 33—PLANNING AND SOLICITATION**

Sec.

3301. Full and open competition.  
 3302. Exclusion of particular source or restriction of solicitation to small business concerns.  
 3303. Use of noncompetitive procedures.  
 3304. Simplified procedures for small purchases.  
 3305. Planning and solicitation requirements.  
 3306. Preference for commercial items.  
 3307. Planning for future competition in contracts for major systems.  
 3308. Design-build selection procedures.  
 3309. Quantities to order.  
 3310. Qualification requirement.

22 **§ 3301. Full and open competition**

23 (a) IN GENERAL.—Except as provided in sections 3302, 3303(a), and  
 24 3304 of this title and except in the case of procurement procedures other-  
 25 wise expressly authorized by statute, an executive agency in conducting a  
 26 procurement for property or services shall—

- 27 (1) obtain full and open competition through the use of competitive  
 28 procedures in accordance with the requirements of this part and the  
 29 Federal Acquisition Regulation; and  
 30 (2) use the competitive procedure or combination of competitive pro-  
 31 cedures that is best suited under the circumstances of the procurement.

32 (b) APPROPRIATE COMPETITIVE PROCEDURES.—

- 33 (1) USE OF SEALED BIDS.—In determining the competitive proce-  
 34 dures appropriate under the circumstance, an executive agency shall—

- 1 (A) solicit sealed bids if—  
 2 (i) time permits the solicitation, submission, and evaluation  
 3 of sealed bids;  
 4 (ii) the award will be made on the basis of price and other  
 5 price-related factors;  
 6 (iii) it is not necessary to conduct discussions with the re-  
 7 sponding sources about their bids; and  
 8 (iv) there is a reasonable expectation of receiving more  
 9 than one sealed bid; or  
 10 (B) request competitive proposals if sealed bids are not appro-  
 11 priate under clause (A).

12 (2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not re-  
 13 quire the use of sealed-bid procedures in cases in which section 204(e)  
 14 of title 23 applies.

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

19 **§ 3302. Exclusion of particular source or restriction of solici-**  
 20 **tation to small business concerns**

21 (a) EXCLUSION OF PARTICULAR SOURCE.—

22 (1) CRITERIA FOR EXCLUSION.—An executive agency may provide  
 23 for the procurement of property or services covered by this section  
 24 using competitive procedures but excluding a particular source to estab-  
 25 lish or maintain an alternative source of supply for that property or  
 26 service if the agency head determines that to do so—

27 (A) would increase or maintain competition and likely result in  
 28 reduced overall cost for the procurement, or for an anticipated  
 29 procurement, of the property or services;

30 (B) would be in the interest of national defense in having a fa-  
 31 cility (or a producer, manufacturer, or other supplier) available for  
 32 furnishing the property or service in case of a national emergency  
 33 or industrial mobilization;

34 (C) would be in the interest of national defense in establishing  
 35 or maintaining an essential engineering, research, or development  
 36 capability to be provided by an educational or other nonprofit in-  
 37 stitution or a Federally funded research and development center;

38 (D) would ensure the continuous availability of a reliable source  
 39 of supply of the property or service;

1 (E) would satisfy projected needs for the property or service de-  
 2 termined on the basis of a history of high demand for the property  
 3 or service; or

4 (F) would satisfy a critical need for medical, safety, or emer-  
 5 gency supplies.

6 (2) DETERMINATION FOR CLASS DISALLOWED.—A determination  
 7 under paragraph (1) may not be made for a class of purchases or con-  
 8 tracts.

9 (b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An ex-  
 10 ecutive agency may provide for the procurement of property or services cov-  
 11 ered by this section using competitive procedures, but excluding other than  
 12 small business concerns in furtherance of sections 9 and 15 of the Small  
 13 Business Act (15 U.S.C. 638, 644).

14 (c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIRE-  
 15 MENTS.—A contract awarded pursuant to the competitive procedures re-  
 16 ferred to in subsections (a) and (b) is not subject to the justification and  
 17 approval required by section 3303(d)(1) of this title.

18 **§ 3303. Use of noncompetitive procedures**

19 (a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An execu-  
 20 tive agency may use procedures other than competitive procedures only  
 21 when—

22 (1) the property or services needed by the executive agency are avail-  
 23 able from only one responsible source and no other type of property  
 24 or services will satisfy the needs of the executive agency;

25 (2) the executive agency's need for the property or services is of such  
 26 an unusual and compelling urgency that the Federal Government would  
 27 be seriously injured unless the executive agency is permitted to limit  
 28 the number of sources from which it solicits bids or proposals;

29 (3) it is necessary to award the contract to a particular source—

30 (A) to maintain a facility, producer, manufacturer, or other sup-  
 31 plier available for furnishing property or services in case of a na-  
 32 tional emergency or to achieve industrial mobilization;

33 (B) to establish or maintain an essential engineering, research,  
 34 or development capability to be provided by an educational or  
 35 other nonprofit institution or a Federally funded research and de-  
 36 velopment center;

37 (C) to procure the services of an expert for use in any litigation  
 38 or dispute (including any reasonably foreseeable litigation or dis-  
 39 pute) involving the Government or in any trial, hearing, or pro-  
 40 ceeding before a court, administrative tribunal, or agency, whether  
 41 or not the expert is expected to testify; or

1 (D) to procure the services of an expert or neutral for use in  
2 any part of an alternative dispute resolution or negotiated rule-  
3 making process, whether or not the expert is expected to testify;

4 (4) the terms of an international agreement or treaty between the  
5 Government and the government of a foreign country or an inter-  
6 national organization, or the written directions of the government of a  
7 foreign country reimbursing the executive agency for the cost of the  
8 procurement of the property or services for that government, require  
9 the use of procedures other than competitive procedures;

10 (5) subject to section 3106 of this title, a statute expressly author-  
11 izes or requires that the procurement be made through another execu-  
12 tive agency or from a specified source, or the agency's need is for a  
13 brand-name commercial item for authorized resale;

14 (6) the disclosure of the executive agency's needs would compromise  
15 the national security unless the agency is permitted to limit the number  
16 of sources from which it solicits bids or proposals; or

17 (7) the head of the executive agency (who may not delegate the au-  
18 thority under this clause)—

19 (A) determines that it is necessary in the public interest to use  
20 procedures other than competitive procedures in the particular  
21 procurement concerned; and

22 (B) notifies Congress in writing of that determination not less  
23 than 30 days before the award of the contract.

24 (b) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE  
25 SOURCE.—For the purposes of subsection (a)(1), in the case of—

26 (1) a contract for property or services to be awarded on the basis  
27 of acceptance of an unsolicited research proposal, the property or serv-  
28 ices are deemed to be available from only one source if the source has  
29 submitted an unsolicited research proposal that demonstrates a unique  
30 and innovative concept, the substance of which is not otherwise avail-  
31 able to the Government and does not resemble the substance of a pend-  
32 ing competitive procurement; or

33 (2) a follow-on contract for the continued development or production  
34 of a major system or highly specialized equipment, the property may  
35 be deemed to be available only from the original source and may be  
36 procured through procedures other than competitive procedures when  
37 it is likely that award to a source other than the original source would  
38 result in—

39 (A) substantial duplication of cost to the Government that is  
40 not expected to be recovered through competition; or

41 (B) unacceptable delay in fulfilling the executive agency's needs.

1 (c) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency  
2 using procedures other than competitive procedures to procure property or  
3 services by reason of the application of subsection (a)(2) or (6) shall request  
4 offers from as many potential sources as is practicable under the cir-  
5 cumstances.

6 (d) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

7 (1) PREREQUISITES FOR AWARDED CONTRACT.—Except as provided  
8 in paragraph (2), an executive agency may not award a contract using  
9 procedures other than competitive procedures unless—

10 (A) the contracting officer for the contract justifies the use of  
11 those procedures in writing and certifies the accuracy and com-  
12 pleteness of the justification;

13 (B) the justification is approved, in the case of a contract for  
14 an amount—

15 (i) exceeding \$500,000 but equal to or less than  
16 \$10,000,000, by the competition advocate for the procuring  
17 activity (without further delegation) or by an official referred  
18 to in subclause (ii) or (iii) of this clause;

19 (ii) exceeding \$10,000,000 but equal to or less than  
20 \$50,000,000, by the head of the procuring activity or by a  
21 delegate who, if a member of the armed forces, is a general  
22 or flag officer or, if a civilian, is serving in a position in which  
23 the individual is entitled to receive the daily equivalent of the  
24 maximum annual rate of basic pay payable under section  
25 5376 of title 5 (or in a comparable or higher position); or

26 (iii) exceeding \$50,000,000, by the senior procurement ex-  
27 ecutive of the agency designated pursuant to section 1702(c)  
28 of this title (without further delegation); and

29 (C) any required notice has been published with respect to the  
30 contract pursuant to section 1707 of this title and the executive  
31 agency has considered all bids or proposals received in response  
32 to that notice.

33 (2) ELEMENTS OF JUSTIFICATION.—The justification required by  
34 paragraph (1)(A) shall include—

35 (A) a description of the agency's needs;

36 (B) an identification of the statutory exception from the re-  
37 quirement to use competitive procedures and a demonstration,  
38 based on the proposed contractor's qualifications or the nature of  
39 the procurement, of the reasons for using that exception;

40 (C) a determination that the anticipated cost will be fair and  
41 reasonable;

1 (D) a description of the market survey conducted or a state-  
2 ment of the reasons a market survey was not conducted;

3 (E) a listing of any sources that expressed in writing an interest  
4 in the procurement; and

5 (F) a statement of any actions the agency may take to remove  
6 or overcome a barrier to competition before a subsequent procure-  
7 ment for those needs.

8 (3) JUSTIFICATION SUBJECT TO PUBLIC INSPECTION.—The justifica-  
9 tion required by paragraph (1)(A) and any related information shall be  
10 made available for inspection by the public consistent with section 552  
11 of title 5.

12 (4) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the  
13 case of a procurement permitted by subsection (a)(2), the justification  
14 and approval required by paragraph (1) may be made after the con-  
15 tract is awarded.

16 (5) JUSTIFICATION NOT REQUIRED.—The justification and approval  
17 required by paragraph (1) are not required if—

18 (A) a statute expressly requires that the procurement be made  
19 from a specified source;

20 (B) the agency's need is for a brand-name commercial item for  
21 authorized resale;

22 (C) the procurement is permitted by subsection (e)(7) of this  
23 section; or

24 (D) the procurement is conducted under chapter 85 of this title  
25 or section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

26 (6) RESTRICTIONS ON EXECUTIVE AGENCIES.—

27 (A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERV-  
28 ICES.—In no case may an executive agency—

29 (i) enter into a contract for property or services using pro-  
30 cedures other than competitive procedures on the basis of the  
31 lack of advance planning or concerns related to the amount  
32 available to the agency for procurement functions; or

33 (ii) procure property or services from another executive  
34 agency unless the other executive agency complies fully with  
35 the requirements of this part in its procurement of the prop-  
36 erty or services.

37 (B) ADDITIONAL RESTRICTION.—The restriction set out in sub-  
38 paragraph (A)(ii) is in addition to any other restriction provided  
39 by law.

1 **§ 3304. Simplified procedures for small purchases**

2 (a) AUTHORIZATION.—To promote efficiency and economy in contracting  
3 and to avoid unnecessary burdens for agencies and contractors, the Federal  
4 Acquisition Regulation shall provide for special simplified procedures for  
5 purchases of property and services for amounts—

6 (1) not greater than the simplified acquisition threshold; and

7 (2) greater than the simplified acquisition threshold but not greater  
8 than \$5,000,000 for which the contracting officer reasonably expects,  
9 based on the nature of the property or services sought and on market  
10 research, that offers will include only commercial items.

11 (b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of  
12 General Services shall prescribe regulations that provide special simplified  
13 procedures for acquisitions of leasehold interests in real property at rental  
14 rates that do not exceed the simplified acquisition threshold. The rental rate  
15 under a multiyear lease does not exceed the simplified acquisition threshold  
16 if the average annual amount of the rent payable for the period of the lease  
17 does not exceed the simplified acquisition threshold.

18 (c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or  
19 contract for an amount above the simplified acquisition threshold may not  
20 be divided into several purchases or contracts for lesser amounts to use the  
21 simplified procedures required by paragraph (1).

22 (d) PROMOTION OF COMPETITION.—In using the simplified procedures,  
23 an executive agency shall promote competition to the maximum extent prac-  
24 ticable.

25 (e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISI-  
26 TION REGULATION.—An executive agency shall comply with the Federal Ac-  
27 quisition Regulation provisions referred to in section 1901(f) of this title.

28 **§ 3305. Planning and solicitation requirements**

29 (a) PLANNING AND SPECIFICATIONS.—

30 (1) PREPARING FOR PROCUREMENT.—In preparing for the procure-  
31 ment of property or services, an executive agency shall—

32 (A) specify its needs and solicit bids or proposals in a manner  
33 designed to achieve full and open competition for the procurement;

34 (B) use advance procurement planning and market research;  
35 and

36 (C) develop specifications in the manner necessary to obtain full  
37 and open competition with due regard to the nature of the prop-  
38 erty or services to be acquired.

39 (2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under  
40 this part shall include specifications that—

1 (A) consistent with this part, permit full and open competition;  
2 and

3 (B) include restrictive provisions or conditions only to the extent  
4 necessary to satisfy the needs of the executive agency or as au-  
5 thorized by law.

6 (3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1)  
7 and (2), the type of specification included in a solicitation shall depend  
8 on the nature of the needs of the executive agency and the market  
9 available to satisfy those needs. Subject to those needs, specifications  
10 may be stated in terms of—

11 (A) function, so that a variety of products or services may qual-  
12 ify;

13 (B) performance, including specifications of the range of accept-  
14 able characteristics or of the minimum acceptable standards; or

15 (C) design requirements.

16 (b) CONTENTS OF SOLICITATION.—In addition to the specifications de-  
17 scribed in subsection (a), each solicitation for sealed bids or competitive pro-  
18 posals (other than for a procurement for commercial items using special  
19 simplified procedures or a purchase for an amount not greater than the sim-  
20 plified acquisition threshold) shall at a minimum include—

21 (1) a statement of—

22 (A) all significant factors and significant subfactors that the ex-  
23 ecutive agency reasonably expects to consider in evaluating sealed  
24 bids (including price) or competitive proposals (including cost or  
25 price, cost-related or price-related factors and subfactors, and  
26 noncost-related or nonprice-related factors and subfactors); and

27 (B) the relative importance assigned to each of those factors  
28 and subfactors; and

29 (2)(A) in the case of sealed bids—

30 (i) a statement that sealed bids will be evaluated without discus-  
31 sions with the bidders; and

32 (ii) the time and place for the opening of the sealed bids; or

33 (B) in the case of competitive proposals—

34 (i) either a statement that the proposals are intended to be eval-  
35 uated with, and the award made after, discussions with the  
36 offerors, or a statement that the proposals are intended to be eval-  
37 uated, and the award made, without discussions with the offerors  
38 (other than discussions conducted for the purpose of minor clari-  
39 fication) unless discussions are determined to be necessary; and

40 (ii) the time and place for submission of proposals.

41 (c) EVALUATION FACTORS.—

1 (1) IN GENERAL.—In prescribing the evaluation factors to be in-  
2 cluded in each solicitation for competitive proposals, an executive agen-  
3 cy shall—

4 (A) establish clearly the relative importance assigned to the  
5 evaluation factors and subfactors, including the quality of the  
6 product or services to be provided (including technical capability,  
7 management capability, prior experience, and past performance of  
8 the offeror);

9 (B) include cost or price to the Federal Government as an eval-  
10 uation factor that must be considered in the evaluation of pro-  
11 posals; and

12 (C) disclose to offerors whether all evaluation factors other than  
13 cost or price, when combined, are—

- 14 (i) significantly more important than cost or price;  
15 (ii) approximately equal in importance to cost or price; or  
16 (iii) significantly less important than cost or price.

17 (2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations  
18 implementing paragraph (1)(C) may not define the terms “significantly  
19 more important” and “significantly less important” as specific numeric  
20 weights that would be applied uniformly to all solicitations or a class  
21 of solicitations.

22 (d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not  
23 prohibit an executive agency from—

24 (1) providing additional information in a solicitation, including nu-  
25 meric weights for all evaluation factors and subfactors on a case-by-  
26 case basis; or

27 (2) stating in a solicitation that award will be made to the offeror  
28 that meets the solicitation’s mandatory requirements at the lowest cost  
29 or price.

30 (e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive  
31 agency, in issuing a solicitation for a contract to be awarded using sealed  
32 bid procedures, may not include in the solicitation a clause providing for the  
33 evaluation of prices for options to purchase additional property or services  
34 under the contract unless the executive agency has determined that there  
35 is a reasonable likelihood that the options will be exercised.

36 (f) AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRAC-  
37 TORS—

38 (1) DEFINITION.—In this subsection, the term “executive agency”  
39 has the meaning given that term in section 132 of this title.

40 (2) FEDERAL ACQUISITION REGULATION TO ALLOW TELECOM-  
41 MUTING.—The Federal Acquisition Regulation issued in accordance

1 with sections 1121(b) and 1302(a)(1) of this title shall permit telecom-  
2 muting by employees of Government contractors in the performance of  
3 contracts entered into with executive agencies.

4 (3) SCOPE OF ALLOWANCE.—The Regulation at a minimum shall  
5 provide that a solicitation for the acquisition of property or services  
6 may not set forth any requirement or evaluation criteria that would—

7 (A) render an offeror ineligible to enter into a contract on the  
8 basis of the inclusion of a plan of the offeror to allow the offeror's  
9 employees to telecommute, unless the contracting officer concerned  
10 first determines that the requirements of the agency, including se-  
11 curity requirements, cannot be met if telecommuting is allowed  
12 and documents in writing the basis for the determination; or

13 (B) reduce the scoring of an offer on the basis of the inclusion  
14 in the offer of a plan of the offeror to allow the offeror's employ-  
15 ees to telecommute, unless the contracting officer concerned first  
16 determines that the requirements of the agency, including security  
17 requirements, would be adversely impacted if telecommuting is  
18 permitted and documents in writing the basis for the determina-  
19 tion.

#### 20 **§ 3306. Preference for commercial items**

21 (a) RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COM-  
22 Mercial Items.—

23 (1) THIS PART.—Unless otherwise specifically provided, this section  
24 does not provide that another provision of this part relating to procure-  
25 ment is inapplicable to the procurement of commercial items.

26 (2) LAWS LISTED IN FEDERAL ACQUISITION REGULATION.—A con-  
27 tract for the procurement of a commercial item entered into by the  
28 head of an executive agency is not subject to a law properly listed in  
29 the Federal Acquisition Regulation pursuant to section 1906 of this  
30 title.

31 (b) PREFERENCE.—The head of each executive agency shall ensure that,  
32 to the maximum extent practicable—

33 (1) requirements of the executive agency with respect to a procure-  
34 ment of supplies or services are stated in terms of—

35 (A) functions to be performed;

36 (B) performance required; or

37 (C) essential physical characteristics;

38 (2) those requirements are defined so that commercial items or, to  
39 the extent that commercial items suitable to meet the executive agen-  
40 cy's needs are not available, nondevelopmental items other than com-  
41 mercial items may be procured to fulfill those requirements; and

1           (3) offerors of commercial items and nondevelopmental items other  
2           than commercial items are provided an opportunity to compete in any  
3           procurement to fill those requirements.

4           (e) IMPLEMENTATION.—The head of each executive agency shall ensure  
5           that procurement officials in that executive agency, to the maximum extent  
6           practicable—

7           (1) acquire commercial items or nondevelopmental items other than  
8           commercial items to meet the needs of the executive agency;

9           (2) require that prime contractors and subcontractors at all levels  
10           under contracts of the executive agency incorporate commercial items  
11           or nondevelopmental items other than commercial items as components  
12           of items supplied to the executive agency;

13           (3) modify requirements in appropriate cases to ensure that the re-  
14           quirements can be met by commercial items or, to the extent that com-  
15           mercial items suitable to meet the executive agency’s needs are not  
16           available, nondevelopmental items other than commercial items;

17           (4) state specifications in terms that enable and encourage bidders  
18           and offerors to supply commercial items or, to the extent that commer-  
19           cial items suitable to meet the executive agency’s needs are not avail-  
20           able, nondevelopmental items other than commercial items in response  
21           to the executive agency solicitations;

22           (5) revise the executive agency’s procurement policies, practices, and  
23           procedures not required by law to reduce any impediments in those  
24           policies, practices, and procedures to the acquisition of commercial  
25           items; and

26           (6) require training of appropriate personnel in the acquisition of  
27           commercial items.

28           (d) MARKET RESEARCH.—

29           (1) WHEN TO BE USED.—The head of an executive agency shall con-  
30           duct market research appropriate to the circumstances—

31           (A) before developing new specifications for a procurement by  
32           that executive agency; and

33           (B) before soliciting bids or proposals for a contract in excess  
34           of the simplified acquisition threshold.

35           (2) USE OF RESULTS.—The head of an executive agency shall use  
36           the results of market research to determine whether commercial items  
37           or, to the extent that commercial items suitable to meet the executive  
38           agency’s needs are not available, nondevelopmental items other than  
39           commercial items are available that—

40           (A) meet the executive agency’s requirements;

1 (B) could be modified to meet the executive agency's require-  
2 ments; or

3 (C) could meet the executive agency's requirements if those re-  
4 quirements were modified to a reasonable extent.

5 (3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—  
6 In conducting market research, the head of an executive agency should  
7 not require potential sources to submit more than the minimum infor-  
8 mation that is necessary to make the determinations required in para-  
9 graph (2).

10 (e) REGULATIONS.—

11 (1) IN GENERAL.—The Federal Acquisition Regulation shall provide  
12 regulations to implement this section and sections 102–104 and 109  
13 of this title.

14 (2) CONTRACT CLAUSES.—

15 (A) DEFINITION.—In this paragraph, the term “subcontract”  
16 includes a transfer of commercial items between divisions, subsidi-  
17 aries, or affiliates of a contractor or subcontractor.

18 (B) LIST OF CLAUSES TO BE INCLUDED.—The regulations pre-  
19 scribed under paragraph (1) shall contain a list of contract clauses  
20 to be included in contracts for the acquisition of commercial end  
21 items. To the maximum extent practicable, the list shall include  
22 only those contract clauses—

23 (i) that are required to implement provisions of law or ex-  
24 ecutive orders applicable to acquisitions of commercial items  
25 or commercial components; or

26 (ii) that are determined to be consistent with standard  
27 commercial practice.

28 (C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations  
29 shall provide that the Federal Government shall not require a  
30 prime contractor to apply to any of its divisions, subsidiaries, af-  
31 filiates, subcontractors, or suppliers that are furnishing commer-  
32 cial items any contract clause except those—

33 (i) that are required to implement provisions of law or ex-  
34 ecutive orders applicable to subcontractors furnishing com-  
35 mercial items or commercial components; or

36 (ii) that are determined to be consistent with standard  
37 commercial practice.

38 (D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the  
39 maximum extent practicable, only the contract clauses listed pur-  
40 suant to subparagraph (B) may be used in a contract, and only  
41 the contract clauses referred to in subparagraph (C) may be re-

1           required to be used in a subcontract, for the acquisition of commer-  
2           cial items or commercial components by or for an executive agen-  
3           cy.

4           (E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition  
5           Regulation shall provide standards and procedures for waiving the  
6           use of contract clauses required pursuant to subparagraph (B),  
7           other than those required by law, including standards for deter-  
8           mining the cases in which a waiver is appropriate.

9           (3) MARKET ACCEPTANCE.—

10          (A) REQUIREMENT OF OFFERORS.—The Federal Acquisition  
11          Regulation shall provide that under appropriate conditions the  
12          head of an executive agency may require offerors to demonstrate  
13          that the items offered—

14                 (i) have achieved commercial market acceptance or been  
15                 satisfactorily supplied to an executive agency under current or  
16                 recent contracts for the same or similar requirements; and

17                 (ii) otherwise meet the item description, specifications, or  
18                 other criteria prescribed in the public notice and solicitation  
19                 relating to the contract.

20          (B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The  
21          Federal Acquisition Regulation shall provide guidance to ensure  
22          that the criteria for determining commercial market acceptance in-  
23          clude the consideration of—

24                 (i) the minimum needs of the executive agency concerned;  
25                 and

26                 (ii) the entire relevant commercial market, including small  
27                 businesses.

28          (4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

29          (A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal  
30          Acquisition Regulation shall include, for acquisitions of commercial  
31          items—

32                 (i) a requirement that firm, fixed price contracts or fixed  
33                 price with economic price adjustment contracts be used to the  
34                 maximum extent practicable;

35                 (ii) a prohibition on use of cost type contracts; and

36                 (iii) subject to subparagraph (B), authority for use of a  
37                 time-and-materials or labor-hour contract for the procurement  
38                 of commercial services that are commonly sold to the general  
39                 public through those contracts and are purchased by the pro-  
40                 curing agency on a competitive basis.

1 (B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT  
 2 MAY BE USED.—A time-and-materials or labor-hour contract may  
 3 be used pursuant to the authority of referred to in subparagraph  
 4 (A)(iii)—

5 (i) only for a procurement of commercial services in a cat-  
 6 egory of commercial services described in subparagraph (C);  
 7 and

8 (ii) only if the contracting officer for the procurement—

9 (I) executes a determination and findings that no  
 10 other contract type is suitable;

11 (II) includes in the contract a ceiling price that the  
 12 contractor exceeds at the risk of the contractor; and

13 (III) authorizes a subsequent change in the ceiling  
 14 price only on a determination, documented in the con-  
 15 tract file, that it is in the best interest of the procuring  
 16 agency to change the ceiling price.

17 (C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of  
 18 commercial services referred to in subparagraph (B) are as fol-  
 19 lows:

20 (i) Commercial services procured for support of a commer-  
 21 cial item, as described in section 103(5) of this title.

22 (ii) Any other category of commercial services that the Ad-  
 23 ministrator for Federal Procurement Policy designates in the  
 24 Federal Acquisition Regulation for the purposes of this sub-  
 25 paragraph on the basis that—

26 (I) the commercial services in the category are of a  
 27 type of commercial services that are commonly sold to  
 28 the general public through use of time-and-materials or  
 29 labor-hour contracts; and

30 (II) it would be in the best interests of the Govern-  
 31 ment to authorize use of time-and-materials or labor-  
 32 hour contracts for purchases of the commercial services  
 33 in the category.

34 (5) CONTRACT QUALITY REQUIREMENTS.—Regulations prescribed  
 35 under paragraph (1) shall include provisions that—

36 (A) to the maximum extent practicable allow a contractor under  
 37 a commercial items acquisition to use the existing quality assur-  
 38 ance system of the contractor as a substitute for compliance with  
 39 an otherwise applicable requirement for the Government to inspect  
 40 or test the commercial items before the contractor's tender of  
 41 those items for acceptance by the Government;

1 (B) to the maximum extent practicable require that the execu-  
 2 tive agency take advantage of warranties (including extended war-  
 3 ranties) offered by offerors of commercial items and use those  
 4 warranties for the repair and replacement of commercial items;  
 5 and

6 (C) set forth guidance regarding the use of past performance of  
 7 commercial items and sources as a factor in contract award deci-  
 8 sions.

9 **§ 3307. Planning for future competition in contracts for**  
 10 **major systems**

11 (a) DEVELOPMENT CONTRACT.—

12 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In pre-  
 13 paring a solicitation for the award of a development contract for a  
 14 major system, the head of an agency shall consider requiring in the so-  
 15 licitation that an offeror include in its offer proposals described in  
 16 paragraph (2). In determining whether to require the proposals, the  
 17 head of the agency shall consider the purposes for which the system  
 18 is being procured and the technology necessary to meet the system’s  
 19 required capabilities. If the proposals are required, the head of the  
 20 agency shall consider them in evaluating the offeror’s price.

21 (2) CONTENTS OF PROPOSALS.—The proposals that the head of an  
 22 agency is to consider requiring in a solicitation for the award of a de-  
 23 velopment contract are the following:

24 (A) Proposals to incorporate in the design of the major system  
 25 items that are currently available within the supply system of the  
 26 Federal agency responsible for the major system, available else-  
 27 where in the national supply system, or commercially available  
 28 from more than one source.

29 (B) With respect to items that are likely to be required in sub-  
 30 stantial quantities during the system’s service life, proposals to in-  
 31 corporate in the design of the major system items that the Federal  
 32 Government will be able to acquire competitively in the future.

33 (b) PRODUCTION CONTRACT.—

34 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In pre-  
 35 paring a solicitation for the award of a production contract for a major  
 36 system, the head of an agency shall consider requiring in the solicita-  
 37 tion that an offeror include in its offer proposals described in para-  
 38 graph (2). In determining whether to require the proposals, the head  
 39 of the agency shall consider the purposes for which the system is being  
 40 procured and the technology necessary to meet the system’s required

1 capabilities. If the proposals are required, the head of the agency shall  
2 consider them in evaluating the offeror's price.

3 (2) CONTENT OF PROPOSALS.—The proposals that the head of an  
4 agency is to consider requiring in a solicitation for the award of a pro-  
5 duction contract are proposals identifying opportunities to ensure that  
6 the Government will be able to obtain on a competitive basis items pro-  
7 cured in connection with the system that are likely to be repro-  
8 curred in substantial quantities during the service life of the system. Proposals  
9 submitted in response to this requirement may include the following:

10 (A) Proposals to provide to the Government the right to use  
11 technical data to be provided under the contract for competitive  
12 reprourement of the item, together with the cost to the Govern-  
13 ment of acquiring the data and the right to use the data.

14 (B) Proposals for the qualification or development of multiple  
15 sources of supply for the item.

16 (c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—  
17 If the head of an agency is making a noncompetitive award of a develop-  
18 ment contract or a production contract for a major system, the factors spec-  
19 ified in subsections (a) and (b) to be considered in evaluating an offer for  
20 a contract may be considered as objectives in negotiating the contract to  
21 be awarded.

### 22 **§ 3308. Design-build selection procedures**

23 (a) AUTHORIZATION.—Unless the traditional acquisition approach of de-  
24 sign-bid-build established under chapter 11 of title 40 or another acquisition  
25 procedure authorized by law is used, the head of an executive agency shall  
26 use the two-phase selection procedures authorized in this section for enter-  
27 ing into a contract for the design and construction of a public building, fa-  
28 cility, or work when a determination is made under subsection (b) that the  
29 procedures are appropriate for use.

30 (b) CRITERIA FOR USE.—A contracting officer shall make a determina-  
31 tion whether two-phase selection procedures are appropriate for use for en-  
32 tering into a contract for the design and construction of a public building,  
33 facility, or work when—

34 (1) the contracting officer anticipates that three or more offers will  
35 be received for the contract;

36 (2) design work must be performed before an offeror can develop a  
37 price or cost proposal for the contract;

38 (3) the offeror will incur a substantial amount of expense in pre-  
39 paring the offer; and

40 (4) the contracting officer has considered information such as the  
41 following:

- 1           (A) The extent to which the project requirements have been  
2 adequately defined.
- 3           (B) The time constraints for delivery of the project.
- 4           (C) The capability and experience of potential contractors.
- 5           (D) The suitability of the project for use of the two-phase selec-  
6 tion procedures.
- 7           (E) The capability of the agency to manage the two-phase selec-  
8 tion process.
- 9           (F) Other criteria established by the agency.

10       (e) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of  
11 the following:

12           (1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency  
13 develops, either in-house or by contract, a scope of work statement for  
14 inclusion in the solicitation that defines the project and provides pro-  
15 spective offerors with sufficient information regarding the Federal Gov-  
16 ernment’s requirements (which may include criteria and preliminary de-  
17 sign, budget parameters, and schedule or delivery requirements) to en-  
18 able the offerors to submit proposals that meet the Government’s  
19 needs. If the agency contracts for development of the scope of work  
20 statement, the agency shall contract for architectural and engineering  
21 services as defined by and in accordance with chapter 11 of title 40.

22           (2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting offi-  
23 cer solicits phase-one proposals that—

- 24           (A) include information on the offeror’s—  
25               (i) technical approach; and  
26               (ii) technical qualifications; and  
27           (B) do not include—  
28               (i) detailed design information; or  
29               (ii) cost or price information.

30           (3) EVALUATION FACTORS.—The evaluation factors to be used in  
31 evaluating phase-one proposals are stated in the solicitation and include  
32 specialized experience and technical competence, capability to perform,  
33 past performance of the offeror’s team (including the architect-engineer  
34 and construction members of the team), and other appropriate factors,  
35 except that cost-related or price-related evaluation factors are not per-  
36 mitted. Each solicitation establishes the relative importance assigned to  
37 the evaluation factors and subfactors that must be considered in the  
38 evaluation of phase-one proposals. The agency evaluates phase-one pro-  
39 posals on the basis of the phase-one evaluation factors set forth in the  
40 solicitation.

41           (4) SELECTION BY CONTRACTING OFFICER.—

1 (A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE  
 2 EVALUATED.—The contracting officer selects as the most highly  
 3 qualified the number of offerors specified in the solicitation to pro-  
 4 vide the property or services under the contract and requests the  
 5 selected offerors to submit phase-two competitive proposals that  
 6 include technical proposals and cost or price information. Each so-  
 7 licitation establishes with respect to phase two—

8 (i) the technical submission for the proposal, including de-  
 9 sign concepts or proposed solutions to requirements addressed  
 10 within the scope of work, or both; and

11 (ii) the evaluation factors and subfactors, including cost or  
 12 price, that must be considered in the evaluations of proposals  
 13 in accordance with section 3305(b)–(d) of this title.

14 (B) SEPARATE EVALUATIONS.—The contracting officer sepa-  
 15 rately evaluates the submissions described in clauses (i) and (ii)  
 16 of subparagraph (A).

17 (5) AWARDING OF CONTRACT.—The agency awards the contract in  
 18 accordance with section 3307, chapter 37, and section 4702 of this  
 19 title.

20 (d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED  
 21 FOR PHASE-TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation  
 22 issued pursuant to the procedures described in subsection (c) shall state the  
 23 maximum number of offerors that are to be selected to submit competitive  
 24 proposals pursuant to subsection (c)(4). The maximum number specified in  
 25 the solicitation shall not exceed five unless the agency determines with re-  
 26 spect to an individual solicitation that a specified number greater than five  
 27 is in the Government’s interest and is consistent with the purposes and ob-  
 28 jectives of the two-phase selection process.

29 (e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Ac-  
 30 quisition Regulation shall include guidance—

31 (1) regarding the factors that may be considered in determining  
 32 whether the two-phase contracting procedures authorized by subsection

33 (a) are appropriate for use in individual contracting situations;

34 (2) regarding the factors that may be used in selecting contractors;  
 35 and

36 (3) providing for a uniform approach to be used Government-wide.

37 **§ 3309. Quantities to order**

38 (a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency  
 39 shall procure supplies in a quantity that—

40 (1) will result in the total cost and unit cost most advantageous to  
 41 the Federal Government, where practicable; and

1           (2) does not exceed the quantity reasonably expected to be required  
2           by the agency.

3           (b) OFFEROR'S OPINION OF QUANTITY.—Each solicitation for a contract  
4           for supplies shall, if practicable, include a provision inviting each offeror re-  
5           sponding to the solicitation to state an opinion on whether the quantity of  
6           supplies proposed to be procured is economically advantageous to the Gov-  
7           ernment and, if applicable, to recommend a quantity that would be more  
8           economically advantageous to the Government. Each recommendation shall  
9           include a quotation of the total price and the unit price for supplies pro-  
10          cured in each recommended quantity.

11          **§ 3310. Qualification requirement**

12          (a) DEFINITION.—In this section, the term “qualification requirement”  
13          means a requirement for testing or other quality assurance demonstration  
14          that must be completed by an offeror before award of a contract.

15          (b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Ex-  
16          cept as provided in subsection (c), the head of an agency, before enforcing  
17          any qualification requirement, shall—

18                (1) prepare a written justification stating the necessity for estab-  
19                lishing the qualification requirement and specify why the qualification  
20                requirement must be demonstrated before contract award;

21                (2) specify in writing and make available to a potential offeror on  
22                request all requirements that a prospective offeror, or its product, must  
23                satisfy to become qualified, with those requirements to be limited to  
24                those least restrictive to meet the purposes necessitating the establish-  
25                ment of the qualification requirement;

26                (3) specify an estimate of the cost of testing and evaluation likely  
27                to be incurred by a potential offeror to become qualified;

28                (4) ensure that a potential offeror is provided, on request, a prompt  
29                opportunity to demonstrate at its own expense (except as provided in  
30                subsection (d)) its ability to meet the standards specified for qualifica-  
31                tion using—

32                    (A) qualified personnel and facilities—

33                            (i) of the agency concerned;

34                            (ii) of another agency obtained through interagency agree-  
35                            ment; or

36                            (iii) under contract; or

37                    (B) other methods approved by the agency (including use of ap-  
38                    proved testing and evaluation services not provided under contract  
39                    to the agency);

1 (5) if testing and evaluation services are provided under contract to  
 2 the agency for the purposes of clause (4), provide to the extent possible  
 3 that those services be provided by a contractor that—

4 (A) is not expected to benefit from an absence of additional  
 5 qualified sources; and

6 (B) is required in the contract to adhere to any restriction on  
 7 technical data asserted by the potential offeror seeking qualifica-  
 8 tion; and

9 (6) ensure that a potential offeror seeking qualification is promptly  
 10 informed whether qualification is attained and, if not attained, is  
 11 promptly furnished specific information about why qualification was  
 12 not attained.

13 (e) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

14 (1) APPLICABILITY.—Subsection (b) does not apply to a qualification  
 15 requirement established by statute prior to October 30, 1984.

16 (2) WAIVER AUTHORITY.—

17 (A) SUBMISSION OF DETERMINATION OF  
 18 UNREASONABLENESS.—Except as provided in subparagraph (C), if  
 19 it is unreasonable to specify the standards for qualification that  
 20 a prospective offeror or its product must satisfy, a determination  
 21 to that effect shall be submitted to the advocate for competition  
 22 of the procuring activity responsible for the purchase of the item  
 23 subject to the qualification requirement.

24 (B) AUTHORITY TO GRANT WAIVER.—After considering any  
 25 comments of the advocate for competition reviewing the deter-  
 26 mination, the head of the procuring activity may waive the re-  
 27 quirements of paragraphs (2)–(5) of subsection (b) for up to two  
 28 years with respect to the item subject to the qualification require-  
 29 ment.

30 (C) NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—Waiv-  
 31 er authority under this paragraph does not apply with respect to  
 32 a qualified products list.

33 (3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DE-  
 34 NIED.—A potential offeror may not be denied the opportunity to sub-  
 35 mit and have considered an offer for a contract solely because the po-  
 36 tential offeror has not been identified as meeting a qualification re-  
 37 quirement if the potential offeror can satisfy the contracting officer  
 38 that the potential offeror or its product meets the standards established  
 39 for qualification or can meet those standards before the date specified  
 40 for award of the contract.

1 (4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT RE-  
2 QUIRED.—This subsection does not require the referral of an offer to  
3 the Small Business Administration pursuant to section 8(b)(7) of the  
4 Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral  
5 is a challenge by the offeror to either the validity of the qualification  
6 requirement or the offeror’s compliance with that requirement.

7 (5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an  
8 agency need not delay a proposed procurement to comply with sub-  
9 section (b) or to provide a potential offeror with an opportunity to dem-  
10 onstrate its ability to meet the standards specified for qualification.

11 (d) FEWER THAN TWO ACTUAL MANUFACTURERS.—

12 (1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PROD-  
13 UCTS.—If the number of qualified sources or qualified products avail-  
14 able to compete actively for an anticipated future requirement is fewer  
15 than two actual manufacturers or the products of two actual manufac-  
16 turers, respectively, the head of the agency concerned shall—

17 (A) publish notice periodically in the Commerce Business Daily  
18 soliciting additional sources or products to seek qualification, un-  
19 less the contracting officer determines that doing so would com-  
20 promise national security; and

21 (B) subject to paragraph (2), bear the cost of conducting the  
22 specified testing and evaluation (excluding the cost associated with  
23 producing the item or establishing the production, quality control,  
24 or other system to be tested and evaluated) for a small business  
25 concern or a product manufactured by a small business concern  
26 that has met the standards specified for qualification and that  
27 could reasonably be expected to compete for a contract for that  
28 requirement.

29 (2) WHEN AGENCY MAY BEAR COST.—The head of the agency con-  
30 cerned may bear the cost under paragraph (1)(B) only if the head of  
31 the agency determines that the additional qualified sources or products  
32 are likely to result in cost savings from increased competition for future  
33 requirements sufficient to offset (within a reasonable period of time  
34 considering the duration and dollar value of anticipated future require-  
35 ments) the cost incurred by the agency.

36 (3) CERTIFICATION REQUIRED.—The head of the agency shall re-  
37 quire a prospective contractor requesting the Federal Government to  
38 bear testing and evaluation costs under paragraph (1)(B) to certify its  
39 status as a small business concern under section 3 of the Small Busi-  
40 ness Act (15 U.S.C. 632).

(e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within seven years after the establishment of a qualification requirement, the need for the requirement shall be examined and the standards of the requirement revalidated in accordance with the requirements of subsection (b). This subsection does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT ALLOWED.—Except in an emergency as determined by the head of the agency, after the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not enforce the requirement unless the agency complies with the requirements of subsection (b).

## CHAPTER 35—TRUTHFUL COST AND PRICING DATA

Sec.

- 3501. Definitions.
- 3502. Required cost or pricing data and certification.
- 3503. Exceptions.
- 3504. Cost or pricing data on below-threshold contracts.
- 3505. Submission of other information.
- 3506. Price reductions for defective cost or pricing data.
- 3507. Interest and penalties for certain overpayments.
- 3508. Right to examine contractor records.

### § 3501. Definitions

In this chapter—

(1) COMMERCIAL ITEM.—The term “commercial item” has the meaning provided the term by section 103 of this title.

(2) COST OR PRICING DATA.—The term “cost or pricing data” means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with section 3506(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include factual information from which a judgment was derived.

(3) SUBCONTRACT.—The term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

### § 3502. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an executive agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under this part to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

1 (A) in the case of a prime contract entered into after October  
2 13, 1994, the price of the contract to the Federal Government is  
3 expected to exceed \$500,000; and

4 (B) in the case of a prime contract entered into on or before  
5 October 14, 1994, the price of the contract to the Government is  
6 expected to exceed \$100,000.

7 (2) CONTRACTOR.—The contractor for a prime contract under this  
8 part shall be required to submit cost or pricing data before the pricing  
9 of a change or modification to the contract if—

10 (A) in the case of a change or modification made to a prime  
11 contract referred to in paragraph (1)(A), the price adjustment is  
12 expected to exceed \$500,000;

13 (B) in the case of a change or modification made to a prime  
14 contract that was entered into on or before October 13, 1994, and  
15 that has been modified pursuant to subsection (f), the price ad-  
16 justment is expected to exceed \$500,000; and

17 (C) in the case of a change or modification not covered by  
18 clause (A) or (B), the price adjustment is expected to exceed  
19 \$100,000.

20 (3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at  
21 any tier) of a contract under this part shall be required to submit cost  
22 or pricing data before the award of the subcontract if the prime con-  
23 tractor and each higher-tier subcontractor have been required to make  
24 available cost or pricing data under this section and—

25 (A) in the case of a subcontract under a prime contract referred  
26 to in paragraph (1)(A), the price of the subcontract is expected  
27 to exceed \$500,000;

28 (B) in the case of a subcontract entered into under a prime con-  
29 tract that was entered into on or before October 13, 1994, and  
30 that has been modified pursuant to subsection (f), the price of the  
31 subcontract is expected to exceed \$500,000; and

32 (C) in the case of a subcontract not covered by clause (A) or  
33 (B), the price of the subcontract is expected to exceed \$100,000.

34 (4) SUBCONTRACTOR.—The subcontractor for a subcontract covered  
35 by paragraph (3) shall be required to submit cost or pricing data before  
36 the pricing of a change or modification to the subcontract if—

37 (A) in the case of a change or modification to a subcontract re-  
38 ferred to in paragraph (3)(A) or (B), the price adjustment is ex-  
39 pected to exceed \$500,000; and

1           (B) in the case of a change or modification to a subcontract re-  
2           ferred to in paragraph (3)(C), the price adjustment is expected to  
3           exceed \$100,000.

4           (b) CERTIFICATION.—A person required, as an offeror, contractor, or  
5           subcontractor, to submit cost or pricing data under subsection (a) (or re-  
6           quired by the head of the procuring activity concerned to submit the data  
7           under section 3504 of this title) shall be required to certify that, to the best  
8           of the person's knowledge and belief, the cost or pricing data submitted are  
9           accurate, complete, and current.

10          (c) TO WHOM SUBMITTED.—Cost or pricing data required to be sub-  
11          mitted under subsection (a) (or under section 3504 of this title), and a cer-  
12          tification required to be submitted under subsection (b), shall be sub-  
13          mitted—

14               (1) in the case of a submission by a prime contractor (or an offeror  
15               for a prime contract), to the contracting officer for the contract (or a  
16               designated representative of the contracting officer); or

17               (2) in the case of a submission by a subcontractor (or an offeror for  
18               a subcontract), to the prime contractor.

19          (d) APPLICATION OF CHAPTER.—Except as provided under section 3503  
20          of this title, this chapter applies to contracts entered into by the head of  
21          an executive agency on behalf of a foreign government.

22          (e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of require-  
23          ments for submission of certified cost or pricing data that is granted under  
24          section 3503(a)(3) of this title in the case of a contract or subcontract does  
25          not waive the requirement under section 3503(a)(3) for submission of cost  
26          or pricing data in the case of subcontracts under that contract or sub-  
27          contract unless the head of the procuring activity granting the waiver deter-  
28          mines that the requirement under that subsection should be waived in the  
29          case of those subcontracts and justifies in writing the reason for the deter-  
30          mination.

31          (f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a con-  
32          tractor that was required to submit cost or pricing data under subsection  
33          (a) in connection with a prime contract entered into on or before October  
34          13, 1994, the head of the executive agency that entered into the contract  
35          shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of sub-  
36          section (a). All those modifications shall be made without requiring consid-  
37          eration.

38          (g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year  
39          that is divisible by 5, each amount set forth in subsection (a) shall be ad-  
40          justed to the amount that is equal to the fiscal year 1994 constant dollar  
41          value of the amount set forth. Any amount, as so adjusted, that is not even-

1 ly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000.  
 2 In the case of an amount that is evenly divisible by \$25,000 but not evenly  
 3 divisible by \$50,000, the amount shall be rounded to the next higher mul-  
 4 tiple of \$50,000.

5 **§ 3503. Exceptions**

6 (a) IN GENERAL.—Submission of certified cost or pricing data shall not  
 7 be required under section 3502 of this title in the case of a contract, a sub-  
 8 contract, or a modification of a contract or subcontract—

9 (1) for which the price agreed on is based on—

10 (A) adequate price competition; or

11 (B) prices set by law or regulation;

12 (2) for the acquisition of a commercial item; or

13 (3) in an exceptional case when the head of the procuring activity,  
 14 without delegation, determines that the requirements of this chapter  
 15 may be waived and justifies in writing the reasons for the determina-  
 16 tion.

17 (b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL  
 18 ITEMS.—In the case of a modification of a contract or subcontract for  
 19 a commercial item that is not covered by the exception to the submission  
 20 of certified cost or pricing data in subsection (a)(1) or (2), submission of  
 21 certified cost or pricing data shall not be required under section 3502 of  
 22 this title if—

23 (1) the contract or subcontract being modified is a contract or sub-  
 24 contract for which submission of certified cost or pricing data may not  
 25 be required by reason of subsection (a)(1) or (2); and

26 (2) the modification would not change the contract or subcontract,  
 27 as the case may be, from a contract or subcontract for the acquisition  
 28 of a commercial item to a contract or subcontract for the acquisition  
 29 of an item other than a commercial item.

30 **§ 3504. Cost or pricing data on below-threshold contracts**

31 (a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b),  
 32 when certified cost or pricing data are not required to be submitted by sec-  
 33 tion 3502 of this title for a contract, subcontract, or modification of a con-  
 34 tract or subcontract, the data may nevertheless be required to be submitted  
 35 by the head of the procuring activity, but only if the head of the procuring  
 36 activity determines that the data are necessary for the evaluation by the  
 37 agency of the reasonableness of the price of the contract, subcontract, or  
 38 modification of a contract or subcontract. In any case in which the head  
 39 of the procuring activity requires the data to be submitted under this sec-  
 40 tion, the head of the procuring activity shall justify in writing the reason  
 41 for the requirement.

1 (b) EXCEPTION.—The head of the procuring activity may not require cer-  
 2 tified cost or pricing data to be submitted under this section for any con-  
 3 tract or subcontract, or modification of a contract or subcontract, covered  
 4 by the exceptions in section 3503(a)(1) or (2) of this title.

5 (c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring  
 6 activity may not delegate the functions under this section.

7 **§ 3505. Submission of other information**

8 (a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pric-  
 9 ing data are not required to be submitted under this chapter for a contract,  
 10 subcontract, or modification of a contract or subcontract, the contracting of-  
 11 ficer shall require submission of data other than certified cost or pricing  
 12 data to the extent necessary to determine the reasonableness of the price  
 13 of the contract, subcontract, or modification of the contract or subcontract.  
 14 Except in the case of a contract or subcontract covered by the exceptions  
 15 in section 3503(a)(1) of this title, the contracting officer shall require that  
 16 the data submitted include, at a minimum, appropriate information on the  
 17 prices at which the same item or similar items have previously been sold  
 18 that is adequate for evaluating the reasonableness of the price for the pro-  
 19 curement.

20 (b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation  
 21 shall include the following provisions regarding the types of information that  
 22 contracting officers may require under subsection (a):

23 (1) REASONABLE LIMITATIONS.—Reasonable limitations on requests  
 24 for sales data relating to commercial items.

25 (2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a con-  
 26 tracting officer limit, to the maximum extent practicable, the scope of  
 27 any request for information relating to commercial items from an offer-  
 28 or to only that information that is in the form regularly maintained  
 29 by the offeror in commercial operations.

30 (3) INFORMATION NOT TO BE DISCLOSED.—A statement that any in-  
 31 formation received relating to commercial items that is exempt from  
 32 disclosure under section 552(b) of title 5 shall not be disclosed by the  
 33 Federal Government.

34 **§ 3506. Price reductions for defective cost or pricing data**

35 (a) PROVISION REQUIRING ADJUSTMENT.—

36 (1) IN GENERAL.—A prime contract (or change or modification to  
 37 a prime contract) under which a certificate under section 3502(b) of  
 38 this title is required shall contain a provision that the price of the con-  
 39 tract to the Federal Government, including profit or fee, shall be ad-  
 40 justed to exclude any significant amount by which it may be deter-  
 41 mined by the head of the executive agency that the price was increased

1 because the contractor (or any subcontractor required to make the cer-  
2 tificate available) submitted defective cost or pricing data.

3 (2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For  
4 the purposes of this chapter, defective cost or pricing data are cost or  
5 pricing data that, as of the date of agreement on the price of the con-  
6 tract (or another date agreed on between the parties), were inaccurate,  
7 incomplete, or noncurrent. If for purposes of the preceding sentence the  
8 parties agree on a date other than the date of agreement on the price  
9 of the contract, the date agreed on by the parties shall be as close to  
10 the date of agreement on the price of the contract as is practicable.

11 (b) VALID DEFENSE.—In determining for purposes of a contract price  
12 adjustment under a contract provision required by subsection (a) whether,  
13 and to what extent, a contract price was increased because the contractor  
14 (or a subcontractor) submitted defective cost or pricing data, it is a defense  
15 that the Government did not rely on the defective data submitted by the  
16 contractor or subcontractor.

17 (c) INVALID DEFENSES.—It is not a defense to an adjustment of the  
18 price of a contract under a contract provision required by subsection (a)  
19 that—

20 (1) the price of the contract would not have been modified even if  
21 accurate, complete, and current cost or pricing data had been sub-  
22 mitted by the contractor or subcontractor because the contractor or  
23 subcontractor—

24 (A) was the sole source of the property or services procured; or

25 (B) otherwise was in a superior bargaining position with respect  
26 to the property or services procured;

27 (2) the contracting officer should have known that the cost or pricing  
28 data in issue were defective even though the contractor or subcon-  
29 tractor took no affirmative action to bring the character of the data  
30 to the attention of the contracting officer;

31 (3) the contract was based on an agreement between the contractor  
32 and the Government about the total cost of the contract and there was  
33 no agreement about the cost of each item procured under the contract;  
34 or

35 (4) the prime contractor or subcontractor did not submit a certifi-  
36 cation of cost or pricing data relating to the contract as required by  
37 section 3502(b) of this title.

38 (d) OFFSETS.—

39 (1) WHEN ALLOWED.—A contractor shall be allowed to offset an  
40 amount against the amount of a contract price adjustment under a  
41 contract provision required by subsection (a) if—

1 (A) the contractor certifies to the contracting officer (or to a  
2 designated representative of the contracting officer) that, to the  
3 best of the contractor's knowledge and belief, the contractor is en-  
4 titled to the offset; and

5 (B) the contractor proves that the cost or pricing data were  
6 available before the date of agreement on the price of the contract  
7 (or price of the modification), or, if applicable, consistent with  
8 subsection (a)(2), another date agreed on by the parties, and that  
9 the data were not submitted as specified in section 3502(c) of this  
10 title before that date.

11 (2) WHEN NOT ALLOWED.—A contractor shall not be allowed to off-  
12 set an amount otherwise authorized to be offset under paragraph (1)  
13 if—

14 (A) the certification under section 3502(b) of this title with re-  
15 spect to the cost or pricing data involved was known to be false  
16 when signed; or

17 (B) the Government proves that, had the cost or pricing data  
18 referred to in paragraph (1)(B) been submitted to the Government  
19 before date of agreement on the price of the contract (or price of  
20 the modification), or, if applicable, under subsection (a)(2), an-  
21 other date agreed on by the parties, the submission of the cost or  
22 pricing data would not have resulted in an increase in that price  
23 in the amount to be offset.

24 **§ 3507. Interest and penalties for certain overpayments**

25 (a) IN GENERAL.—If the Federal Government makes an overpayment to  
26 a contractor under a contract with an executive agency subject to this chap-  
27 ter and the overpayment was due to the submission by the contractor of  
28 defective cost or pricing data, the contractor shall be liable to the Govern-  
29 ment—

30 (1) for interest on the amount of the overpayment, to be computed—

31 (A) for the period beginning on the date the overpayment was  
32 made to the contractor and ending on the date the contractor re-  
33 pays the amount of the overpayment to the Government; and

34 (B) at the current rate prescribed by the Secretary of the  
35 Treasury under section 6621 of the Internal Revenue Code of  
36 1986 (26 U.S.C. 6621); and

37 (2) if the submission of the defective data was a knowing submission,  
38 for an additional amount equal to the amount of the overpayment.

39 (b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFI-  
40 CATION.—Any liability under this section of a contractor that submits cost  
41 or pricing data but refuses to submit the certification required by section

1 3502(b) of this title with respect to the cost or pricing data is not affected  
 2 by the refusal to submit the certification.

3 **§ 3508. Right to examine contractor records**

4 For the purpose of evaluating the accuracy, completeness, and currency  
 5 of cost or pricing data required to be submitted by this chapter, an execu-  
 6 tive agency shall have the authority provided by section 4706(b)(2) of this  
 7 title.

8 **CHAPTER 37—AWARDING OF CONTRACTS**

Sec.

- 3701. Basis of award and rejection.
- 3702. Sealed bids.
- 3703. Competitive proposals.
- 3704. Post-award debriefings.
- 3705. Pre-award debriefings.
- 3706. Encouragement of alternative dispute resolution.
- 3707. Antitrust violations.
- 3708. Protests.

9 **§ 3701. Basis of award and rejection**

10 (a) AWARD.—An executive agency shall evaluate sealed bids and competi-  
 11 tive proposals, and award a contract, based solely on the factors specified  
 12 in the solicitation.

13 (b) REJECTION.—All sealed bids or competitive proposals received in re-  
 14 sponse to a solicitation may be rejected if the agency head determines that  
 15 rejection is in the public interest.

16 **§ 3702. Sealed bids**

17 (a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time  
 18 and place stated in the solicitation.

19 (b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall  
 20 evaluate the bids in accordance with section 3701(a) of this title without  
 21 discussions with the bidders and, except as provided in section 3701(b) of  
 22 this title, shall award a contract with reasonable promptness to the respon-  
 23 sible source whose bid conforms to the solicitation and is most advantageous  
 24 to the Federal Government, considering only price and the other price-re-  
 25 lated factors included in the solicitation.

26 (c) NOTICE OF AWARD.—The award of a contract shall be made by trans-  
 27 mitting, in writing or by electronic means, notice of the award to the suc-  
 28 cessful bidder. Within three days after the date of contract award, the exec-  
 29 utive agency shall notify, in writing or by electronic means, each bidder not  
 30 awarded the contract that the contract has been awarded.

31 **§ 3703. Competitive proposals**

32 (a) EVALUATION AND AWARD.—An executive agency shall evaluate com-  
 33 petitive proposals in accordance with section 3701(a) of this title and may  
 34 award a contract—

1 (1) after discussions with the offerors, provided that written or oral  
2 discussions have been conducted with all responsible offerors who sub-  
3 mit proposals within the competitive range; or

4 (2) based on the proposals received and without discussions with the  
5 offerors (other than discussions conducted for the purpose of minor  
6 clarification), if, as required by section 3305(b)(2)(B)(i) of this title,  
7 the solicitation included a statement that proposals are intended to be  
8 evaluated, and award made, without discussions unless discussions are  
9 determined to be necessary.

10 (b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer deter-  
11 mines that the number of offerors that would otherwise be included in the  
12 competitive range under subsection (a)(1) exceeds the number at which an  
13 efficient competition can be conducted, the contracting officer may limit the  
14 number of proposals in the competitive range, in accordance with the cri-  
15 teria specified in the solicitation, to the greatest number that will permit  
16 an efficient competition among the offerors rated most highly in accordance  
17 with those criteria.

18 (c) CRITERIA FOR AWARDING CONTRACT.—Except as otherwise provided  
19 in section 3701(b) of this title, the executive agency shall award a contract  
20 with reasonable promptness to the responsible source whose proposal is most  
21 advantageous to the Federal Government, considering only cost or price and  
22 the other factors included in the solicitation.

23 (d) NOTICE OF AWARD.—The executive agency shall award the contract  
24 by transmitting, in writing or by electronic means, notice of the award to  
25 that source and, within three days after the date of contract award, shall  
26 notify, in writing or by electronic means, all other offerors of the rejection  
27 of their proposals.

#### 28 **§ 3704. Post-award debriefings**

29 (a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the  
30 head of an executive agency on the basis of competitive proposals, an unsuccess-  
31 ful offeror, on written request received by the agency within three days  
32 after the date on which the unsuccessful offeror receives the notification of  
33 the contract award, shall be debriefed and furnished the basis for the selec-  
34 tion decision and contract award.

35 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall  
36 debrief the offeror within, to the maximum extent practicable, five days  
37 after receipt of the request by the executive agency.

38 (c) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a  
39 minimum—

40 (1) the executive agency's evaluation of the significant weak or defi-  
41 cient factors in the offeror's offer;

1 (2) the overall evaluated cost and technical rating of the offer of the  
2 contractor awarded the contract and the overall evaluated cost and  
3 technical rating of the offer of the debriefed offeror;

4 (3) the overall ranking of all offers;

5 (4) a summary of the rationale for the award;

6 (5) in the case of a proposal that includes a commercial item that  
7 is an end item under the contract, the make and model of the item  
8 being provided in accordance with the offer of the contractor awarded  
9 the contract; and

10 (6) reasonable responses to relevant questions posed by the debriefed  
11 offeror as to whether source selection procedures set forth in the solici-  
12 tation, applicable regulations, and other applicable authorities were fol-  
13 lowed by the executive agency.

14 (d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not in-  
15 clude point-by-point comparisons of the debriefed offeror's offer with other  
16 offers and may not disclose any information that is exempt from disclosure  
17 under section 552(b) of title 5.

18 (e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for  
19 competitive proposals shall include a statement that information described  
20 in subsection (c) may be disclosed in post-award debriefings.

21 (f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of  
22 the contract award and as a result of a successful procurement protest, the  
23 executive agency seeks to fulfill the requirement under the protested con-  
24 tract either on the basis of a new solicitation of offers or on the basis of  
25 new best and final offers requested for that contract, the head of the execu-  
26 tive agency shall make available to all offerors—

27 (1) the information provided in debriefings under this section regard-  
28 ing the offer of the contractor awarded the contract; and

29 (2) the same information that would have been provided to the origi-  
30 nal offerors.

31 (g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall  
32 include a summary of the debriefing in the contract file.

### 33 **§ 3705. Pre-award debriefings**

34 (a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes  
35 an offeror submitting a competitive proposal from the competitive range (or  
36 otherwise excludes that offeror from further consideration prior to the final  
37 source selection decision), the excluded offeror may request in writing, with-  
38 in three days after the date on which the excluded offeror receives notice  
39 of its exclusion, a debriefing prior to award.

40 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer  
41 shall make every effort to debrief the unsuccessful offeror as soon as prac-

1 ticable but may refuse the request for a debriefing if it is not in the best  
2 interests of the Federal Government to conduct a debriefing at that time.

3 (c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting of-  
4 ficer is required to debrief an excluded offeror in accordance with section  
5 3704 of this title only if that offeror requested and was refused a pre-award  
6 debriefing under subsection (b).

7 (d) INFORMATION TO BE PROVIDED.—The debriefing conducted under  
8 this section shall include—

9 (1) the executive agency’s evaluation of the significant elements in  
10 the offeror’s offer;

11 (2) a summary of the rationale for the offeror’s exclusion; and

12 (3) reasonable responses to the relevant questions posed by the de-  
13 briefed offeror as to whether source selection procedures set forth in  
14 the solicitation, applicable regulations, and other applicable authorities  
15 were followed by the executive agency.

16 (e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted  
17 pursuant to this section may not disclose the number or identity of other  
18 offerors and shall not disclose information about the content, ranking, or  
19 evaluation of other offerors’ proposals.

20 (f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall  
21 include a summary of the debriefing in the contract file.

## 22 **§ 3706. Encouragement of alternative dispute resolution**

23 The Federal Acquisition Regulation shall include a provision encouraging  
24 the use of alternative dispute resolution techniques to provide informal, ex-  
25 peditious, and inexpensive procedures for an offeror to consider using before  
26 filing a protest, prior to the award of a contract, of the exclusion of the  
27 offeror from the competitive range (or otherwise from further consideration)  
28 for that contract.

## 29 **§ 3707. Antitrust violations**

30 If the agency head considers that a bid or proposal evidences a violation  
31 of the antitrust laws, the agency head shall refer the bid or proposal to the  
32 Attorney General for appropriate action.

## 33 **§ 3708. Protests**

34 (a) PROTEST FILE.—

35 (1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation  
36 for a contract issued by, or an award or proposed award of a contract  
37 by, the head of an executive agency, a protest is filed pursuant to the  
38 procedures in subchapter V of chapter 35 of title 31, and an actual  
39 or prospective offeror requests, a file of the protest shall be established  
40 by the procuring activity and reasonable access shall be provided to ac-  
41 tual or prospective offerors.

1 (2) REDACTED INFORMATION.—Information exempt from disclosure  
 2 under section 552 of title 5 may be redacted in a file established pursu-  
 3 ant to paragraph (1) unless an applicable protective order provides oth-  
 4 erwise.

5 (b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest,  
 6 the head of an executive agency determines that a solicitation, proposed  
 7 award, or award does not comply with the requirements of law or regula-  
 8 tion, the head of the executive agency—

9 (1) may take any action set out in clauses (A)–(F) of subsection  
 10 (b)(1) of section 3554 of title 31; and

11 (2) may pay costs described in paragraph (1) of section 3554(c) of  
 12 title 31 within the limits referred to in paragraph (2) of section  
 13 3554(c).

#### 14 **CHAPTER 39—SPECIFIC TYPES OF CONTRACTS**

Sec.

3901. Contracts awarded using procedures other than sealed-bid procedures.

3902. Severable services contracts for periods crossing fiscal years.

3903. Multiyear contracts.

3904. Contract authority for severable services contracts and multiyear contracts.

3905. Cost-plus contracts.

3906. Share-in-savings contracts.

#### 15 **§ 3901. Contracts awarded using procedures other than** 16 **sealed-bid procedures**

17 (a) AUTHORIZED TYPES.—Except as provided in section 3905 of this  
 18 title, contracts awarded after using procedures other than sealed-bid proce-  
 19 dures may be of any type which in the opinion of the agency head will pro-  
 20 mote the best interests of the Federal Government.

21 (b) REQUIRED WARRANTY.—

22 (1) CONTENT.—Every contract awarded after using procedures other  
 23 than sealed-bid procedures shall contain a suitable warranty, as deter-  
 24 mined by the agency head, by the contractor that no person or selling  
 25 agency has been employed or retained to solicit or secure the contract  
 26 on an agreement or understanding for a commission, percentage, bro-  
 27 kerage, or contingent fee, except for bona fide employees or bona fide  
 28 established commercial or selling agencies the contractor maintains to  
 29 secure business.

30 (2) REMEDY FOR BREACH OR VIOLATION.—For the breach or viola-  
 31 tion of the warranty, the Government may annul the contract without  
 32 liability or deduct from the contract price or consideration the full  
 33 amount of the commission, percentage, brokerage, or contingent fee.

34 (3) NONAPPLICATION.—Paragraph (1) does not apply to a contract  
 35 for an amount that is not greater than the simplified acquisition  
 36 threshold or to a contract for the acquisition of commercial items.

1    **§ 3902. Severable services contracts for periods crossing fis-**  
2                    **cal years**

3           (a) **AUTHORITY TO ENTER INTO CONTRACT.**—The head of an executive  
4 agency may enter into a contract for the procurement of severable services  
5 for a period that begins in one fiscal year and ends in the next fiscal year  
6 if (without regard to an option to extend the period of the contract) the  
7 contract period does not exceed one year.

8           (b) **OBLIGATION OF AMOUNTS.**—Amounts made available for a fiscal year  
9 may be obligated for the total amount of a contract entered into under the  
10 authority of this section.

11    **§ 3903. Multiyear contracts**

12           (a) **DEFINITION.**—In this section, a multiyear contract is a contract for  
13 the purchase of property or services for more than one, but not more than  
14 five, program years.

15           (b) **AUTHORITY TO ENTER INTO CONTRACT.**—An executive agency may  
16 enter into a multiyear contract for the acquisition of property or services  
17 if—

18                   (1) amounts are available and obligated for the contract, for the full  
19 period of the contract or for the first fiscal year in which the contract  
20 is in effect, and for the estimated costs associated with a necessary ter-  
21 mination of the contract; and

22                   (2) the executive agency determines that—

23                           (A) the need for the property or services is reasonably firm and  
24 continuing over the period of the contract; and

25                           (B) a multiyear contract will serve the best interests of the Fed-  
26 eral Government by encouraging full and open competition or pro-  
27 moting economy in administration, performance, and operation of  
28 the agency's programs.

29           (c) **TERMINATION CLAUSE.**—A multiyear contract entered into under the  
30 authority of this section shall include a clause that provides that the con-  
31 tract shall be terminated if amounts are not made available for the continu-  
32 ation of the contract in a fiscal year covered by the contract. Amounts avail-  
33 able for paying termination costs shall remain available for that purpose  
34 until the costs associated with termination of the contract are paid.

35           (d) **CANCELLATION CEILING NOTICE.**—Before a contract described in  
36 subsection (b) that contains a clause setting forth a cancellation ceiling in  
37 excess of \$10,000,000 may be awarded, the executive agency shall give writ-  
38 ten notification of the proposed contract and of the proposed cancellation  
39 ceiling for that contract to Congress. The contract may not be awarded until  
40 the end of the 30-period beginning on the date of the notification.

1 (e) CONTINGENCY CLAUSE FOR APPROPRIATION OF AMOUNTS.—A  
2 multiyear contract may provide that performance under the contract after  
3 the first year of the contract is contingent on the appropriation of amounts  
4 and, if that is provided, that a cancellation payment shall be made to the  
5 contractor if the amounts are not appropriated.

6 (f) OTHER LAW NOT AFFECTED.—This section does not modify or affect  
7 any other provision of law that authorizes multiyear contracts.

8 **§ 3904. Contract authority for severable services contracts**  
9 **and multiyear contracts**

10 (a) COMPTROLLER GENERAL.—The Comptroller General may use avail-  
11 able amounts to enter into contracts for the procurement of severable serv-  
12 ices for a period that begins in one fiscal year and ends in the next fiscal  
13 year and to enter into multiyear contracts for the acquisition of property  
14 and nonaudit-related services to the same extent as executive agencies under  
15 sections 3902 and 3903 of this title.

16 (b) LIBRARY OF CONGRESS.—The Library of Congress may use available  
17 amounts to enter into contracts for the lease or procurement of severable  
18 services for a period that begins in one fiscal year and ends in the next fis-  
19 cal year and to enter into multiyear contracts for the acquisition of property  
20 and services pursuant to sections 3902 and 3903 of this title.

21 (c) CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTA-  
22 TIVES.—The Chief Administrative Officer of the House of Representatives  
23 may enter into—

24 (1) contracts for the procurement of severable services for a period  
25 that begins in one fiscal year and ends in the next fiscal year to the  
26 same extent as the head of an executive agency under the authority of  
27 section 3902 of this title; and

28 (2) multiyear contracts for the acquisitions of property and  
29 nonaudit-related services to the same extent as executive agencies  
30 under the authority of section 3903 of this title.

31 (d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office  
32 may use available amounts to enter into contracts for the procurement of  
33 severable services for a period that begins in one fiscal year and ends in  
34 the next fiscal year and may enter into multiyear contracts for the acqui-  
35 sition of property and services to the same extent as executive agencies under  
36 the authority of sections 3902 and 3903 of this title.

37 (e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE  
38 SENATE.—Subject to regulations prescribed by the Committee on Rules and  
39 Administration of the Senate, the Secretary and the Sergeant of Arms and  
40 Doorkeeper of the Senate may enter into—

1 (1) contracts for the procurement of severable services for a period  
 2 that begins in one fiscal year and ends in the next fiscal year to the  
 3 same extent and under the same conditions as the head of an executive  
 4 agency under the authority of section 3902 of this title; and

5 (2) multiyear contracts for the acquisition of property and services  
 6 to the same extent and under the same conditions as executive agencies  
 7 under the authority of section 3903 of this title.

8 (f) CAPITOL POLICE.—The United States Capitol Police may enter into—

9 (1) contracts for the procurement of severable services for a period  
 10 that begins in one fiscal year and ends in the next fiscal year to the  
 11 same extent as the head of an executive agency under the authority of  
 12 section 3902 of this title; and

13 (2) multiyear contracts for the acquisitions of property and  
 14 nonaudit-related services to the same extent as executive agencies  
 15 under the authority of section 3903 of this title.

16 (g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may  
 17 enter into—

18 (1) contracts for the procurement of severable services for a period  
 19 that begins in one fiscal year and ends in the next fiscal year to the  
 20 same extent as the head of an executive agency under the authority of  
 21 section 3902 of this title; and

22 (2) multiyear contracts for the acquisitions of property and  
 23 nonaudit-related services to the same extent as executive agencies  
 24 under the authority of section 3903 of this title.

25 (h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of  
 26 the Smithsonian Institution may enter into—

27 (1) contracts for the procurement of severable services for a period  
 28 that begins in one fiscal year and ends in the next fiscal year under  
 29 the authority of section 3902 of this title; and

30 (2) multiyear contracts for the acquisition of property and services  
 31 under the authority of section 3903 of this title.

### 32 **§ 3905. Cost-plus contracts**

33 (a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—  
 34 The cost-plus-a-percentage-of-cost system of contracting shall not be used.

35 (b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

36 (1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the  
 37 fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the  
 38 estimated cost of the contract, not including the fee, as determined by  
 39 the agency head at the time of entering into the contract.

40 (2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The  
 41 fee in a cost-plus-a-fixed-fee contract for experimental, developmental,

1 or research work shall not exceed 15 percent of the estimated cost of  
2 the contract, not including the fee.

3 (3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a  
4 cost-plus-a-fixed-fee for architectural or engineering services relating to  
5 any public works or utility project may include the contractor’s costs  
6 and shall not exceed six percent of the estimated cost of the contract,  
7 not including the fee, as determined by the agency head at the time  
8 of entering into the contract, of the project to which the fee applies.

9 (c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall pro-  
10 vide for advance notification by the contractor to the procuring agency of  
11 any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price sub-  
12 contract or purchase order which exceeds in dollar amount either the sim-  
13 plified acquisition threshold or five percent of the total estimated cost of the  
14 prime contract.

15 (d) RIGHT TO AUDIT.—An authorized representative of a procuring agency  
16 has the right to inspect the plans and to audit the books and records  
17 of a prime contractor or subcontractor engaged in the performance of a cost  
18 or cost-plus-a-fixed-fee contract.

19 **§ 3906. Share-in-savings contracts**

20 (a) DEFINITIONS.—In this section—

21 (1) CONTRACTOR.—The term “contractor” means a private entity  
22 that enters into a contract with an agency.

23 (2) SAVINGS.—The term “savings” means—

24 (A) monetary savings to an agency; or

25 (B) savings in time or other benefits realized by the agency, in-  
26 cluding enhanced revenue (other than enhanced revenue from the  
27 collection of fees, taxes, debts, claims, or other amounts owed the  
28 Federal Government).

29 (3) SHARE-IN-SAVINGS CONTRACT.—The term “share-in-savings con-  
30 tract” means a contract under which—

31 (A) a contractor provides solutions for—

32 (i) improving the agency’s mission-related or administrative  
33 processes; or

34 (ii) accelerating the achievement of agency missions; and

35 (B) the head of the agency pays the contractor an amount equal  
36 to a portion of the savings the agency derives from—

37 (i) improvements in mission-related or administrative pro-  
38 cesses that result from implementing the solution; or

39 (ii) accelerating the achievement of agency missions.

40 (b) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive  
41 agency may enter into a share-in-savings contract for information tech-

1 nology (as defined in section 11101(6) of title 40) in which the Government  
2 awards a contract to improve mission-related or administrative processes or  
3 to accelerate the achievement of its mission and share with the contractor  
4 in savings achieved through contract performance.

5 (c) DURATION OF CONTRACT.—

6 (1) IN GENERAL.—Except as provided in paragraph (2), a share-in-  
7 savings contract shall be awarded for a period of not more than five  
8 years.

9 (2) EXCEPTION.—A share-in-savings contract may be awarded for a  
10 period greater than five years but not more than 10 years if the head  
11 of the agency determines in writing before the contract is awarded  
12 that—

13 (A) the level of risk to be assumed and the investment to be  
14 undertaken by the contractor is likely to inhibit the Government  
15 from obtaining the needed information technology competitively at  
16 a fair and reasonable price if the contract is limited in duration  
17 to a period of not more than five years; and

18 (B) use of the information technology to be acquired is likely  
19 to continue for a period of time sufficient to generate reasonable  
20 benefit for the Government.

21 (d) CONTRACT TO BE PERFORMANCE-BASED.—To the maximum extent  
22 practicable, a contract awarded pursuant to this section shall be a perform-  
23 ance-based contract that identifies objective outcomes and contains perform-  
24 ance standards that will be used to measure achievement and milestones  
25 that must be met before payment is made.

26 (e) SAVINGS SHARE RATIO.—A contract awarded pursuant to this section  
27 shall include a provision containing a quantifiable baseline that is to be the  
28 basis on which a savings share ratio is established that governs the amount  
29 of payment a contractor is to receive under the contract. Before perform-  
30 ance of the contract begins, the senior procurement executive of the agency  
31 shall determine in writing that the terms of the provision are quantifiable  
32 and will likely yield value to the Government.

33 (f) RETAINING SAVINGS.—The head of the agency may retain savings re-  
34 alized through the use of a share-in-savings contract under this section that  
35 are more than the total amount of savings paid to the contractor under the  
36 contract but may not retain the part of the savings that is attributable to  
37 a decrease in the number of civilian employees of the Government per-  
38 forming the function. Savings shall be credited to the appropriation or fund  
39 against which charges were made to carry out the contract and shall be  
40 used for information technology, except that amounts the agency retains—

1 (1) without further appropriation, remain available until expended;  
2 and

3 (2) shall be applied first to fund contingent liabilities associated with  
4 share-in-savings procurements that are not fully funded.

5 (g) CANCELLATION AND TERMINATION.—

6 (1) IN GENERAL.—A share-in-savings contract entered into under  
7 this section shall be canceled or terminated if amounts are not made  
8 available to continue the contract in a subsequent fiscal year.

9 (2) SOURCE OF PAYMENT OF CANCELLATION AND TERMINATION  
10 COSTS.—The cost of cancellation or termination may be paid out of—

11 (A) appropriations available for the performance of the contract;

12 (B) appropriations available for acquiring the information tech-  
13 nology procured under the contract and not otherwise obligated;

14 or

15 (C) amounts subsequently appropriated to pay cancellation or  
16 termination costs, subject to the limitations in paragraph (4).

17 (3) AMOUNT OF CANCELLATION OR TERMINATION COST TO BE NE-  
18 GOTIATED.—The amount payable if a share-in-savings contract is can-  
19 celed or terminated shall be negotiated with the contractor when the  
20 contract is entered into.

21 (4) AUTHORITY TO ENTER INTO CONTRACT WHEN CANCELLATION  
22 OR TERMINATION COSTS NOT FULLY FUNDED.—

23 (A) IN GENERAL.—Subject to subparagraph (B), the head of an  
24 executive agency may enter into a share-in-savings contract under  
25 this section in a fiscal year even if amounts are not made specifi-  
26 cally available for the full cost of cancellation or termination if  
27 amounts are available and sufficient to make payments for the  
28 first fiscal year of the contract and the following conditions are  
29 met regarding the funding of cancellation and termination liability:

30 (i) The amount of unfunded contingent liability for the  
31 contract does not exceed the lesser of—

32 (I) 25 percent of the estimated cost of a cancellation  
33 or termination; or

34 (II) \$5,000,000.

35 (ii) The Director of the Office of Management and Budget  
36 or the Director's designee has approved an unfunded contin-  
37 gent liability of more than \$1,000,000.

38 (B) TOTAL NUMBER OF CONTRACTS ALLOWED.—The aggregate  
39 number of contracts that all executive agencies to which this part  
40 applies may enter into under subparagraph (A) may not exceed  
41 five in each of fiscal years 2004 and 2005.

1 (h) TERMINATION OF AUTHORITY.—Share-in-service contracts may not  
2 be entered into under this section after September 30, 2005.

3 **CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS**

Sec.

4101. Definitions.

4102. Authorities or responsibilities not affected.

4103. General authority.

4104. Guidance on use of task and delivery order contracts.

4105. Advisory and assistance services.

4106. Orders.

4 **§ 4101. Definitions**

5 In this chapter—

6 (1) DELIVERY ORDER CONTRACT.—The term “delivery order con-  
7 tract” means a contract for property that—

8 (A) does not procure or specify a firm quantity of property  
9 (other than a minimum or maximum quantity); and

10 (B) provides for the issuance of orders for the delivery of prop-  
11 erty during the period of the contract.

12 (2) TASK ORDER CONTRACT.—The term “task order contract”  
13 means a contract for services that—

14 (A) does not procure or specify a firm quantity of services  
15 (other than a minimum or maximum quantity); and

16 (B) provides for the issuance of orders for the performance of  
17 tasks during the period of the contract.

18 **§ 4102. Authorities or responsibilities not affected**

19 This chapter does not modify or supersede, and is not intended to impair  
20 or restrict, authorities or responsibilities under chapter 11 of title 40.

21 **§ 4103. General authority**

22 (a) AUTHORITY TO AWARD.—Subject to the requirements of this section,  
23 section 4106 of this title, and other applicable law, the head of an executive  
24 agency may enter into a task or delivery order contract for procurement of  
25 services or property.

26 (b) SOLICITATION.—The solicitation for a task or delivery order contract  
27 shall include—

28 (1) the period of the contract, including the number of options to  
29 extend the contract and the period for which the contract may be ex-  
30 tended under each option;

31 (2) the maximum quantity or dollar value of the services or property  
32 to be procured under the contract; and

33 (3) a statement of work, specifications, or other description that rea-  
34 sonably describes the general scope, nature, complexity, and purposes  
35 of the services or property to be procured under the contract.

36 (c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PRO-  
37 CEDURES.—The head of an executive agency may use procedures other than

1 competitive procedures to enter into a task or delivery order contract under  
 2 this section only if an exception in section 3303(a) of this title applies to  
 3 the contract and the use of those procedures is approved in accordance with  
 4 section 3303(d) of this title.

5 (d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

6 (1) EXERCISE OF AUTHORITY.—The head of an executive agency  
 7 may exercise the authority provided in this section—

8 (A) to award a single task or delivery order contract; or

9 (B) if the solicitation states that the head of the executive agen-  
 10 cy has the option to do so, to award separate task or delivery  
 11 order contracts for the same or similar services or property to two  
 12 or more sources.

13 (2) DETERMINATION NOT REQUIRED.—No determination under sec-  
 14 tion 3302 of this title is required for an award of multiple task or de-  
 15 livery order contracts under paragraph (1)(B).

16 (3) REGULATIONS.—Regulations implementing this subsection shall  
 17 establish—

18 (A) a preference for awarding, to the maximum extent prac-  
 19 ticable, multiple task or delivery order contracts for the same or  
 20 similar services or property under paragraph (1)(B); and

21 (B) criteria for determining when award of multiple task or de-  
 22 livery order contracts would not be in the best interest of the Fed-  
 23 eral Government.

24 (e) CONTRACT MODIFICATIONS.—A task or delivery order may not in-  
 25 crease the scope, period, or maximum value of the task or delivery order  
 26 contract under which the order is issued. The scope, period, or maximum  
 27 value of the contract may be increased only by modification of the contract.

28 (f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE  
 29 SERVICES.—Except as otherwise specifically provided in section 4105 of this  
 30 title, this section does not apply to a task or delivery order contract for the  
 31 acquisition of advisory and assistance services (as defined in section 1105(g)  
 32 of title 31).

33 (g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in  
 34 this section may be construed to limit or expand any authority of the head  
 35 of an executive agency or the Administrator of General Services to enter  
 36 into schedule, multiple award, or task or delivery order contracts under any  
 37 other provision of law.

38 **§ 4104. Guidance on use of task and delivery order contracts**

39 (a) GUIDANCE IN FEDERAL ACQUISITION REGULATION.—The Federal  
 40 Acquisition Regulation issued in accordance with sections 1121(b) and  
 41 1302(a)(1) of this title shall provide guidance to agencies on the appropriate

1 use of task and delivery order contracts in accordance with this chapter and  
2 sections 2304a–2304d of title 10.

3 (b) CONTENT OF REGULATIONS.—The regulations issued pursuant to  
4 subsection (a) at a minimum shall provide specific guidance on—

5 (1) the appropriate use of governmentwide and other multiagency  
6 contracts entered into in accordance this chapter and sections 2304a–  
7 2304d of title 10; and

8 (2) steps that agencies should take in entering into and admin-  
9 istering multiple award task and delivery order contracts to ensure  
10 compliance with the requirement in—

11 (A) section 11312 of title 40 for capital planning and invest-  
12 ment control in purchases of information technology products and  
13 services;

14 (B) section 4106(c) of this title and section 2304e(b) of title 10  
15 to ensure that all contractors are afforded a fair opportunity to  
16 be considered for the award of task and delivery orders; and

17 (C) section 4106(d) of this title and section 2304e(c) of title 10  
18 for a statement of work in each task or delivery order issued that  
19 clearly specifies all tasks to be performed or property to be deliv-  
20 ered under the order.

21 (c) FEDERAL SUPPLY SCHEDULES PROGRAM.—The Administrator for  
22 Federal Procurement Policy shall consult with the Administrator of General  
23 Services to assess the effectiveness of the multiple awards schedule program  
24 of the General Services Administration referred to in section 3101(2)(C) of  
25 this title that is administered as the Federal Supply Schedules program.  
26 The assessment shall include examination of—

27 (1) the administration of the program by the Administrator of Gen-  
28 eral Services; and

29 (2) the ordering and program practices followed by Federal customer  
30 agencies in using schedules established under the program.

### 31 **§ 4105. Advisory and assistance services**

32 (a) DEFINITION.—In this section, the term “advisory and assistance serv-  
33 ices” has the same meaning given that term in section 1105(g) of title 31.

34 (b) AUTHORITY TO AWARD.—

35 (1) IN GENERAL.—Subject to the requirements of this section, sec-  
36 tion 4106 of this title, and other applicable law, the head of an execu-  
37 tive agency may enter into a task order contract for procurement of  
38 advisory and assistance services.

39 (2) ONLY UNDER THIS SECTION.—The head of an executive agency  
40 may enter into a task order contract for advisory and assistance serv-  
41 ices only under this section.

1 (e) LIMITATION ON CONTRACT PERIOD.—The period of a task order con-  
2 tract entered into under this section, including all periods of extensions of  
3 the contract under options, modifications, or otherwise, may not exceed five  
4 years unless a longer period is specifically authorized in a law that is appli-  
5 cable to the contract.

6 (d) CONTENT OF NOTICE.—The notice required by section 1707 of this  
7 title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall  
8 reasonably and fairly describe the general scope, magnitude, and duration  
9 of the proposed task order contract in a manner that would reasonably en-  
10 able a potential offeror to decide whether to request the solicitation and con-  
11 sider submitting an offer.

12 (e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

13 (1) SOLICITATION.—The solicitation shall include the information  
14 (regarding services) described in section 4103(b) of this title.

15 (2) CONTRACT.—A task order contract entered into under this sec-  
16 tion shall contain the same information that is required by paragraph  
17 (1) to be included in the solicitation of offers for that contract.

18 (f) MULTIPLE AWARDS.—

19 (1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one  
20 solicitation, the head of an executive agency may award separate task  
21 order contracts under this section for the same or similar services to  
22 two or more sources if the solicitation states that the head of the exec-  
23 utive agency has the option to do so.

24 (2) CONTENT OF SOLICITATION.—In the case of a task order con-  
25 tract for advisory and assistance services to be entered into under this  
26 section, if the contract period is to exceed three years and the contract  
27 amount is estimated to exceed \$10,000,000 (including all options), the  
28 solicitation shall—

29 (A) provide for a multiple award authorized under paragraph  
30 (1); and

31 (B) include a statement that the head of the executive agency  
32 may also elect to award only one task order contract if the head  
33 of the executive agency determines in writing that only one of the  
34 offerors is capable of providing the services required at the level  
35 of quality required.

36 (3) NONAPPLICATION.—Paragraph (2) does not apply in the case of  
37 a solicitation for which the head of the executive agency concerned de-  
38 termines in writing that, because the services required under the con-  
39 tract are unique or highly specialized, it is not practicable to award  
40 more than one contract.

41 (g) CONTRACT MODIFICATIONS.—

1 (1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT  
 2 ONLY BY MODIFICATION OF CONTRACT.—A task order may not in-  
 3 crease the scope, period, or maximum value of the task order contract  
 4 under which the order is issued. The scope, period, or maximum value  
 5 of the contract may be increased only by modification of the contract.

6 (2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures  
 7 other than competitive procedures is authorized by an exception in sec-  
 8 tion 3303(a) of this title and approved in accordance with section  
 9 3303(d) of this title, competitive procedures shall be used for making  
 10 such a modification.

11 (3) NOTICE.—Notice regarding the modification shall be provided in  
 12 accordance with section 1707 of this title and section 8(e) of the Small  
 13 Business Act (15 U.S.C. 637(e)).

14 (h) CONTRACT EXTENSIONS.—

15 (1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the  
 16 limitation on the contract period set forth in subsection (c) or in a so-  
 17 licitation or contract pursuant to subsection (f), a contract entered into  
 18 by the head of an executive agency under this section may be extended  
 19 on a sole-source basis for a period not exceeding six months if the head  
 20 of the executive agency determines that—

21 (A) the award of a follow-on contract has been delayed by cir-  
 22 cumstances that were not reasonably foreseeable at the time the  
 23 initial contract was entered into; and

24 (B) the extension is necessary to ensure continuity of the receipt  
 25 of services pending the award of, and commencement of perform-  
 26 ance under, the follow-on contract.

27 (2) LIMIT OF ONE EXTENSION.—A task order contract may be ex-  
 28 tended under paragraph (1) only once and only in accordance with the  
 29 limitations and requirements of this subsection.

30 (i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not  
 31 apply to a contract for the acquisition of property or services that includes  
 32 acquisition of advisory and assistance services if the head of the executive  
 33 agency entering into the contract determines that, under the contract, advi-  
 34 sory and assistance services are necessarily incident to, and not a significant  
 35 component of, the contract.

36 **§ 4106. Orders**

37 (a) APPLICATION.—This section applies to task and delivery order con-  
 38 tracts entered into under sections 4103 and 4105 of this title.

39 (b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following  
 40 actions are not required for issuance of a task or delivery order under a  
 41 task or delivery order contract:

1 (1) A separate notice for the order under section 1707 of this title  
2 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

3 (2) Except as provided in subsection (e), a competition (or a waiver  
4 of competition approved in accordance with section 3303(d) of this  
5 title) that is separate from that used for entering into the contract.

6 (c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are award-  
7 ed under section 4103(d)(1)(B) or 4105(f) of this title, all contractors  
8 awarded the contracts shall be provided a fair opportunity to be considered,  
9 pursuant to procedures set forth in the contracts, for each task or delivery  
10 order in excess of \$2,500 that is to be issued under any of the contracts,  
11 unless—

12 (1) the executive agency’s need for the services or property ordered  
13 is of such unusual urgency that providing the opportunity to all of  
14 those contractors would result in unacceptable delays in fulfilling that  
15 need;

16 (2) only one of those contractors is capable of providing the services  
17 or property required at the level of quality required because the services  
18 or property ordered are unique or highly specialized;

19 (3) the task or delivery order should be issued on a sole-source basis  
20 in the interest of economy and efficiency because it is a logical follow-  
21 on to a task or delivery order already issued on a competitive basis;  
22 or

23 (4) it is necessary to place the order with a particular contractor to  
24 satisfy a minimum guarantee.

25 (d) STATEMENT OF WORK.—A task or delivery order shall include a  
26 statement of work that clearly specifies all tasks to be performed or prop-  
27 erty to be delivered under the order.

28 (e) PROTESTS.—A protest is not authorized in connection with the  
29 issuance or proposed issuance of a task or delivery order except for a pro-  
30 test on the ground that the order increases the scope, period, or maximum  
31 value of the contract under which the order is issued.

32 (f) TASK AND DELIVERY ORDER OMBUDSMAN.—

33 (1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The  
34 head of each executive agency who awards multiple task or delivery  
35 order contracts under section 4103(d)(1)(B) or 4105(f) of this title  
36 shall appoint or designate a task and delivery order ombudsman who  
37 shall be responsible for reviewing complaints from the contractors on  
38 those contracts and ensuring that all of the contractors are afforded  
39 a fair opportunity to be considered for task or delivery orders when re-  
40 quired under subsection (e).

1           (2) WHO IS ELIGIBLE.—The task and delivery order ombudsman  
2 shall be a senior agency official who is independent of the contracting  
3 officer for the contracts and may be the executive agency’s advocate  
4 for competition.

## 5                           **CHAPTER 43—ALLOWABLE COSTS**

Sec.

- 4301. Definitions.
- 4302. Adjustment of threshold amount of covered contract.
- 4303. Effect of submission of unallowable costs.
- 4304. Specific costs not allowable.
- 4305. Required regulations.
- 4306. Applicability of regulations to subcontractors.
- 4307. Contractor certification.
- 4308. Penalties for submission of cost known to be unallowable.
- 4309. Burden of proof on contractor.
- 4310. Proceeding costs not allowable.

### 6           **§ 4301. Definitions**

7           In this chapter—

8           (1) COMPENSATION.—The term “compensation”, for a fiscal year,  
9 means the total amount of wages, salary, bonuses, and deferred com-  
10 pensation for the fiscal year, whether paid, earned, or otherwise accru-  
11 ing, as recorded in an employer’s cost accounting records for the fiscal  
12 year.

13           (2) COVERED CONTRACT.—The term “covered contract” means a  
14 contract for an amount in excess of \$500,000 that is entered into by  
15 an executive agency, except that the term does not include a fixed-price  
16 contract without cost incentives or any firm, fixed price contract for  
17 the purchase of commercial items.

18           (3) FISCAL YEAR.—The term “fiscal year” means a fiscal year estab-  
19 lished by a contractor for accounting purposes.

20           (4) SENIOR EXECUTIVE.—The term “senior executive”, with respect  
21 to a contractor, means the five most highly compensated employees in  
22 management positions at each home office and each segment of the  
23 contractor.

### 24           **§ 4302. Adjustment of threshold amount of covered contract**

25           Effective on October 1 of each year that is divisible by five, the amount  
26 set forth in section 4301(2) shall be adjusted to the equivalent amount in  
27 constant fiscal year 1994 dollars. An adjusted amount that is not evenly di-  
28 visible by \$50,000 shall be rounded to the nearest multiple of \$50,000. If  
29 an amount is evenly divisible by \$25,000 but is not evenly divisible by  
30 \$50,000, the amount shall be rounded to the next higher multiple of  
31 \$50,000.

### 32           **§ 4303. Effect of submission of unallowable costs**

33           (a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULA-  
34 TION COST PRINCIPLE.—An executive agency shall require that a covered

1 contract provide that if the contractor submits to the executive agency a  
 2 proposal for settlement of indirect costs incurred by the contractor for any  
 3 period after those costs have been accrued and if that proposal includes the  
 4 submission of a cost that is unallowable because the cost violates a cost  
 5 principle in the Federal Acquisition Regulation or an executive agency sup-  
 6 plement to the Federal Acquisition Regulation, the cost shall be disallowed.

7 (b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

8 (1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency de-  
 9 termines that a cost submitted by a contractor in its proposal for set-  
 10 tlement is expressly unallowable under a cost principle referred to in  
 11 subsection (a) that defines the allowability of specific selected costs, the  
 12 executive agency shall assess a penalty against the contractor in an  
 13 amount equal to—

14 (A) the amount of the disallowed cost allocated to covered con-  
 15 tracts for which a proposal for settlement of indirect costs has  
 16 been submitted; plus

17 (B) interest (to be computed based on provisions in the Federal  
 18 Acquisition Regulation) to compensate the Federal Government  
 19 for the use of the amount which a contractor has been paid in ex-  
 20 cess of the amount to which the contractor was entitled.

21 (2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL  
 22 SUBMITTED.—If the executive agency determines that a proposal for  
 23 settlement of indirect costs submitted by a contractor includes a cost  
 24 determined to be unallowable in the case of that contractor before the  
 25 submission of that proposal, the executive agency shall assess a penalty  
 26 against the contractor in an amount equal to two times the amount of  
 27 the disallowed cost allocated to covered contracts for which a proposal  
 28 for settlement of indirect costs has been submitted.

29 (c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall pro-  
 30 vide for a penalty under subsection (b) to be waived in the case of a con-  
 31 tractor’s proposal for settlement of indirect costs when—

32 (1) the contractor withdraws the proposal before the formal initiation  
 33 of an audit of the proposal by the Government and resubmits a revised  
 34 proposal;

35 (2) the amount of unallowable costs subject to the penalty is insig-  
 36 nificant; or

37 (3) the contractor demonstrates, to the contracting officer’s satisfac-  
 38 tion, that—

39 (A) it has established appropriate policies and personnel train-  
 40 ing and an internal control and review system that provide assur-  
 41 ances that unallowable costs subject to penalties are precluded

1 from being included in the contractor's proposal for settlement of  
2 indirect costs; and

3 (B) the unallowable costs subject to the penalty were inadvert-  
4 ently incorporated into the proposal.

5 (d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of  
6 an executive agency under subsection (a) or (b)—

7 (1) shall be considered a final decision for the purposes of section  
8 6903 of this title; and

9 (2) is appealable in the manner provided in section 6904(a) of this  
10 title.

11 **§ 4304. Specific costs not allowable**

12 (a) SPECIFIC COSTS.—The following costs are not allowable under a cov-  
13 ered contract:

14 (1) Costs of entertainment, including amusement, diversion, and so-  
15 cial activities, and any costs directly associated with those costs (such  
16 as tickets to shows or sports events, meals, lodging, rentals, transpor-  
17 tation, and gratuities).

18 (2) Costs incurred to influence (directly or indirectly) legislative ac-  
19 tion on any matter pending before Congress, a State legislature, or a  
20 legislative body of a political subdivision of a State.

21 (3) Costs incurred in defense of any civil or criminal fraud pro-  
22 ceeding or similar proceeding (including filing of any false certification)  
23 brought by the Federal Government where the contractor is found lia-  
24 ble or had pleaded nolo contendere to a charge of fraud.

25 (4) Payments of fines and penalties resulting from violations of, or  
26 failure to comply with, Federal, State, local, or foreign laws and regula-  
27 tions, except when incurred as a result of compliance with specific  
28 terms and conditions of the contract or specific written instructions  
29 from the contracting officer authorizing in advance those payments in  
30 accordance with applicable provisions of the Federal Acquisition Regu-  
31 lation.

32 (5) Costs of membership in any social, dining, or country club or or-  
33 ganization.

34 (6) Costs of alcoholic beverages.

35 (7) Contributions or donations, regardless of the recipient.

36 (8) Costs of advertising designed to promote the contractor or its  
37 products.

38 (9) Costs of promotional items and memorabilia, including models,  
39 gifts, and souvenirs.

40 (10) Costs for travel by commercial aircraft that exceed the amount  
41 of the standard commercial fare.

1 (11) Costs incurred in making any payment (commonly known as a  
2 “golden parachute payment”) that is—

3 (A) in an amount in excess of the normal severance pay paid  
4 by the contractor to an employee on termination of employment;  
5 and

6 (B) paid to the employee contingent on, and following, a change  
7 in management control over, or ownership of, the contractor or a  
8 substantial portion of the contractor’s assets.

9 (12) Costs of commercial insurance that protects against the costs  
10 of the contractor for correction of the contractor’s own defects in mate-  
11 rials or workmanship.

12 (13) Costs of severance pay paid by the contractor to foreign nation-  
13 als employed by the contractor under a service contract performed out-  
14 side the United States, to the extent that the amount of severance pay  
15 paid in any case exceeds the amount paid in the industry involved  
16 under the customary or prevailing practice for firms in that industry  
17 providing similar services in the United States, as determined under  
18 the Federal Acquisition Regulation.

19 (14) Costs of severance pay paid by the contractor to a foreign na-  
20 tional employed by the contractor under a service contract performed  
21 in a foreign country if the termination of the employment of the foreign  
22 national is the result of the closing of, or the curtailment of activities  
23 at, a Government facility in that country at the request of the govern-  
24 ment of that country.

25 (15) Costs incurred by a contractor in connection with any criminal,  
26 civil, or administrative proceeding commenced by the Government or a  
27 State, to the extent provided in section 4310 of this title.

28 (16) Costs of compensation of senior executives of contractors for a  
29 fiscal year, regardless of the contract funding source, to the extent that  
30 the compensation exceeds the benchmark compensation amount deter-  
31 mined applicable for the fiscal year by the Administrator for Federal  
32 Procurement Policy under section 1127 of this title.

33 (b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATION-  
34 ALS.—

35 (1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal  
36 Acquisition Regulation and subject to the availability of appropriations,  
37 an executive agency, in awarding a covered contract, may waive the ap-  
38 plication of clauses (13) and (14) of subsection (a) to that contract if  
39 the executive agency determines that—

40 (A) the application of clauses (13) and (14) to that contract  
41 would adversely affect the continuation of a program, project, or

1 activity that provides significant support services for employees of  
2 the executive agency posted outside the United States;

3 (B) the contractor has taken (or has established plans to take)  
4 appropriate actions within the contractor's control to minimize the  
5 amount and number of incidents of the payment of severance pay  
6 by the contractor to employees under the contract who are foreign  
7 nationals; and

8 (C) the payment of severance pay is necessary to comply with  
9 a law that is generally applicable to a significant number of busi-  
10 nesses in the country in which the foreign national receiving the  
11 payment performed services under the contract or is necessary to  
12 comply with a collective bargaining agreement.

13 (2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An ex-  
14 ecutive agency shall include in the solicitation for a covered contract  
15 a statement indicating—

16 (A) that a waiver has been granted under paragraph (1) for the  
17 contract; or

18 (B) whether the executive agency will consider granting a waiver  
19 and, if the executive agency will consider granting a waiver, the  
20 criteria to be used in granting the waiver.

21 (3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—  
22 An executive agency shall make the final determination whether to  
23 grant a waiver under paragraph (1) with respect to a covered contract  
24 before award of the contract.

25 (e) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND  
26 QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation  
27 implementing this chapter may establish appropriate definitions, exclusions,  
28 limitations, and qualifications. A submission by a contractor of costs that  
29 are incurred by the contractor and that are claimed to be allowable under  
30 Department of Energy management and operating contracts shall be consid-  
31 ered a proposal for settlement of indirect costs incurred by the contractor  
32 for any period after those costs have been accrued.

### 33 **§ 4305. Required regulations**

34 (a) IN GENERAL.—The Federal Acquisition Regulation shall contain pro-  
35 visions on the allowability of contractor costs. Those provisions shall define  
36 in detail and in specific terms the costs that are unallowable, in whole or  
37 in part, under covered contracts.

38 (b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the  
39 cost principles applicable to contractor costs of the following:

40 (1) Air shows.

41 (2) Membership in civic, community, and professional organizations.

- 1           (3) Recruitment.
- 2           (4) Employee morale and welfare.
- 3           (5) Actions to influence (directly or indirectly) executive branch ac-
- 4           tion on regulatory and contract matters (other than costs incurred in
- 5           regard to contract proposals pursuant to solicited or unsolicited bids).
- 6           (6) Community relations.
- 7           (7) Dining facilities.
- 8           (8) Professional and consulting services, including legal services.
- 9           (9) Compensation.
- 10          (10) Selling and marketing.
- 11          (11) Travel.
- 12          (12) Public relations.
- 13          (13) Hotel and meal expenses.
- 14          (14) Expense of corporate aircraft.
- 15          (15) Company-furnished automobiles.
- 16          (16) Advertising.
- 17          (17) Conventions.

18       (c) ADDITIONAL REQUIREMENTS.—

19           (1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal  
20       Acquisition Regulation shall require that a contracting officer not re-  
21       solve any questioned costs until the contracting officer has obtained—

22           (A) adequate documentation of those costs; and

23           (B) the opinion of the contract auditor on the allowability of  
24       those costs.

25           (2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition  
26       Regulation shall provide that, to the maximum extent practicable, a  
27       contract auditor be present at any negotiation or meeting with the con-  
28       tractor regarding a determination of the allowability of indirect costs  
29       of the contractor.

30           (3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUES-  
31       TIONED COSTS.—The Federal Acquisition Regulation shall require that  
32       all categories of costs designated in the report of a contract auditor as  
33       questioned with respect to a proposal for settlement be resolved in a  
34       manner so that the amount of the individual questioned costs that are  
35       paid will be reflected in the settlement.

36       **§ 4306. Applicability of regulations to subcontractors**

37       The regulations referred to in subsections 4304 and 4305(a) and (b) of  
38       this title shall require prime contractors of a covered contract, to the max-  
39       imum extent practicable, to apply the provisions of those regulations to all  
40       subcontractors of the covered contract.

1 **§ 4307. Contractor certification**

2 (a) CONTENT AND FORM.—A proposal for settlement of indirect costs ap-  
3 plicable to a covered contract shall include a certification by an official of  
4 the contractor that, to the best of the certifying official’s knowledge and be-  
5 lief, all indirect costs included in the proposal are allowable. The certifi-  
6 cation shall be in a form prescribed in the Federal Acquisition Regulation.

7 (b) WAIVER.—An executive agency may, in an exceptional case, waive the  
8 requirement for certification under subsection (a) in the case of a contract  
9 if the agency—

10 (1) determines that it would be in the interest of the Federal Gov-  
11 ernment to waive the certification; and

12 (2) states in writing the reasons for the determination and makes  
13 the determination available to the public.

14 **§ 4308. Penalties for submission of cost known to be unal-**  
15 **lowable**

16 The submission to an executive agency of a proposal for settlement of  
17 costs for any period after those costs have been accrued that includes a cost  
18 that is expressly specified by statute or regulation as being unallowable,  
19 with the knowledge that the cost is unallowable, is subject to section 287  
20 of title 18 and section 3729 of title 31.

21 **§ 4309. Burden of proof on contractor**

22 In a proceeding before a board of contract appeals, the United States  
23 Court of Federal Claims, or any other Federal court in which the reason-  
24 ableness of indirect costs for which a contractor seeks reimbursement from  
25 the Federal Government is in issue, the burden of proof is on the contractor  
26 to establish that those costs are reasonable.

27 **§ 4310. Proceeding costs not allowable**

28 (a) DEFINITIONS.—In this section—

29 (1) COSTS.—The term “costs”, with respect to a proceeding, means  
30 all costs incurred by a contractor, whether before or after the com-  
31 mencement of the proceeding, including—

32 (A) administrative and clerical expenses;

33 (B) the cost of legal services, including legal services performed  
34 by an employee of the contractor;

35 (C) the cost of the services of accountants and consultants re-  
36 tained by the contractor; and

37 (D) the pay of directors, officers, and employees of the con-  
38 tractor for time devoted by those directors, officers, and employees  
39 to the proceeding.

40 (2) PENALTY.—The term “penalty” does not include restitution, re-  
41 imbursement, or compensatory damages.

1 (3) PROCEEDING.—The term “proceeding” includes an investigation.

2 (b) IN GENERAL.—Except as otherwise provided in this section, costs in-  
3 curred by a contractor in connection with a criminal, civil, or administrative  
4 proceeding commenced by the Federal Government or a State are not allow-  
5 able as reimbursable costs under a covered contract if the proceeding—

6 (1) relates to a violation of, or failure to comply with, a Federal or  
7 State statute or regulation; and

8 (2) results in a disposition described in subsection (c).

9 (c) COVERED DISPOSITIONS.—A disposition referred to in subsection  
10 (b)(2) is any of the following:

11 (1) In a criminal proceeding, a conviction (including a conviction  
12 pursuant to a plea of nolo contendere) by reason of the violation or  
13 failure referred to in subsection (b).

14 (2) In a civil or administrative proceeding involving an allegation of  
15 fraud or similar misconduct, a determination of contractor liability on  
16 the basis of the violation or failure referred to in subsection (b).

17 (3) In any civil or administrative proceeding, the imposition of a  
18 monetary penalty by reason of the violation or failure referred to in  
19 subsection (b).

20 (4) A final decision to do any of the following, by reason of the viola-  
21 tion or failure referred to in subsection (b):

22 (A) Debar or suspend the contractor.

23 (B) Rescind or void the contract.

24 (C) Terminate the contract for default.

25 (5) A disposition of the proceeding by consent or compromise if the  
26 disposition could have resulted in a disposition described in clause (1),  
27 (2), (3), or (4).

28 (d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING  
29 COMMENCED BY GOVERNMENT.—In the case of a proceeding referred to in  
30 subsection (b) that is commenced by the Government and is resolved by con-  
31 sent or compromise pursuant to an agreement entered into by a contractor  
32 and the Government, the costs incurred by the contractor in connection with  
33 the proceeding that are otherwise not allowable as reimbursable costs under  
34 subsection (b) may be allowed to the extent specifically provided in that  
35 agreement.

36 (e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PRO-  
37 CEEDING COMMENCED BY STATE.—In the case of a proceeding referred to  
38 in subsection (b) that is commenced by a State, the executive agency that  
39 awarded the covered contract involved in the proceeding may allow the costs  
40 incurred by the contractor in connection with the proceeding as reimburs-

1 able costs if the executive agency determines, in accordance with the Fed-  
 2 eral Acquisition Regulation, that the costs were incurred as a result of—

- 3 (1) a specific term or condition of the contract; or
- 4 (2) specific written instructions of the executive agency.

5 (f) OTHER ALLOWABLE COSTS.—

6 (1) IN GENERAL.—Except as provided in paragraph (3), costs in-  
 7 curred by a contractor in connection with a criminal, civil, or adminis-  
 8 trative proceeding commenced by the Government or a State in connec-  
 9 tion with a covered contract may be allowed as reimbursable costs  
 10 under the contract if the costs are not disallowable under subsection  
 11 (b), but only to the extent provided in paragraph (2).

12 (2) AMOUNT OF ALLOWABLE COSTS.—

13 (A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs al-  
 14 lowable under paragraph (1) in any case may not exceed the  
 15 amount equal to 80 percent of the amount of the costs incurred,  
 16 to the extent that the costs are determined to be otherwise allow-  
 17 able and allocable under the Federal Acquisition Regulation.

18 (B) CONTENT OF REGULATIONS.—Regulations issued for the  
 19 purpose of subparagraph (A) shall provide for appropriate consid-  
 20 eration of the complexity of procurement litigation, generally ac-  
 21 cepted principles governing the award of legal fees in civil actions  
 22 involving the Government as a party, and other factors as may be  
 23 appropriate.

24 (3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—  
 25 In the case of a proceeding referred to in paragraph (1), contractor  
 26 costs otherwise allowable as reimbursable costs under this subsection  
 27 are not allowable if—

28 (A) the proceeding involves the same contractor misconduct al-  
 29 leged as the basis of another criminal, civil, or administrative pro-  
 30 ceeding; and

31 (B) the costs of the other proceeding are not allowable under  
 32 subsection (b).

33 **CHAPTER 45—CONTRACT FINANCING**

Sec.

- 4501. Authority of executive agency.
- 4502. Payment.
- 4503. Security for advance payments.
- 4504. Conditions for progress payments.
- 4505. Payments for commercial items.
- 4506. Action in case of fraud.

34 **§ 4501. Authority of executive agency**

35 An executive agency may—

- 36 (1) make advance, partial, progress or other payments under con-  
 37 tracts for property or services made by the agency; and

1           (2) insert in solicitations for procurement of property or services a  
2           provision limiting to small business concerns advance or progress pay-  
3           ments.

4   **§ 4502. Payment**

5           (a) BASIS FOR PAYMENT.—When practicable, payments under section  
6   4501 of this title shall be made on any of the following bases:

7           (1) Performance measured by objective, quantifiable methods such as  
8           delivery of acceptable items, work measurement, or statistical process  
9           controls.

10          (2) Accomplishment of events defined in the program management  
11          plan.

12          (3) Other quantifiable measures of results.

13          (b) PAYMENT AMOUNT.—Payments made under section 4501 of this title  
14   may not exceed the unpaid contract price.

15   **§ 4503. Security for advance payments**

16          Advance payments under section 4501 of this title may be made only on  
17   adequate security and a determination by the agency head that to do so  
18   would be in the public interest. The security may be in the form of a lien  
19   in favor of the Federal Government on the property contracted for, on the  
20   balance in an account in which the payments are deposited, and on such  
21   of the property acquired for performance of the contract as the parties may  
22   agree. This lien shall be paramount to all other liens and is effective imme-  
23   diately upon the first advancement of amounts without filing, notice, or any  
24   other action by the Government.

25   **§ 4504. Conditions for progress payments**

26          (a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall  
27   ensure that a payment for work in progress (including materials, labor, and  
28   other items) under a contract of an executive agency that provides for those  
29   payments is commensurate with the work accomplished that meets stand-  
30   ards established under the contract. The contractor shall provide informa-  
31   tion and evidence the executive agency determines is necessary to permit the  
32   executive agency to carry out this subsection.

33          (b) LIMITATION.—The executive agency shall ensure that progress pay-  
34   ments referred to in subsection (a) are not made for more than 80 percent  
35   of the work accomplished under the contract as long as the executive agency  
36   has not made the contractual terms, specifications, and price definite.

37          (c) APPLICATION.—This section applies to a contract in an amount great-  
38   er than \$25,000.

39   **§ 4505. Payments for commercial items**

40          (a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section  
41   4501 of this title for commercial items may be made under terms and condi-

1 tions that the head of the executive agency determines are appropriate or  
2 customary in the commercial marketplace and are in the best interests of  
3 the Federal Government.

4 (b) SECURITY FOR PAYMENTS.—The head of the executive agency shall  
5 obtain adequate security for the payments. If the security is in the form  
6 of a lien in favor of the Government, the lien is paramount to all other liens  
7 and is effective immediately on the first payment, without filing, notice, or  
8 other action by the Government.

9 (c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made  
10 under section 4501 of this title for commercial items may include payments,  
11 in a total amount not more than 15 percent of the contract price, in ad-  
12 vance of any performance of work under the contract.

13 (d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sec-  
14 tions 4503 and 4504 of this title need not be applied if they would be incon-  
15 sistent, as determined by the head of the executive agency, with commercial  
16 terms and conditions pursuant to this section.

17 **§ 4506. Action in case of fraud**

18 (a) DEFINITION.—In this section, the term “remedy coordination offi-  
19 cial”, with respect to an executive agency, means the individual or entity  
20 in that executive agency who coordinates within that executive agency the  
21 administration of criminal, civil, administrative, and contractual remedies  
22 resulting from investigations of fraud or corruption related to procurement  
23 activities.

24 (b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any  
25 case in which the remedy coordination official of an executive agency finds  
26 that there is substantial evidence that the request of a contractor for ad-  
27 vance, partial, or progress payment under a contract awarded by that execu-  
28 tive agency is based on fraud, the remedy coordination official shall rec-  
29 ommend that the executive agency reduce or suspend further payments to  
30 that contractor.

31 (c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an execu-  
32 tive agency receiving a recommendation under subsection (b) in the case of  
33 a contractor’s request for payment under a contract shall determine whether  
34 there is substantial evidence that the request is based on fraud. On making  
35 that determination, the head of the executive agency may reduce or suspend  
36 further payments to the contractor under the contract.

37 (d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduc-  
38 tion or suspension of payments by an executive agency under subsection (c)  
39 on the basis of fraud shall be reasonably commensurate with the anticipated  
40 loss to the Federal Government resulting from the fraud.

1 (e) WRITTEN JUSTIFICATION.—A written justification for each decision  
 2 of the head of an executive agency whether to reduce or suspend payments  
 3 under subsection (c), and for each recommendation received by the executive  
 4 agency in connection with the decision, shall be prepared and be retained  
 5 in the files of the executive agency.

6 (f) NOTICE.—The head of each executive agency shall prescribe proce-  
 7 dures to ensure that, before the head of the executive agency decides to re-  
 8 duce or suspend payments in the case of a contractor under subsection (c),  
 9 the contractor is afforded notice of the proposed reduction or suspension  
 10 and an opportunity to submit matters to the executive agency in response  
 11 to the proposed reduction or suspension.

12 (g) REVIEW.—Not later than 180 days after the date on which the head  
 13 of an executive agency reduces or suspends payments to a contractor under  
 14 subsection (c), the remedy coordination official of the executive agency  
 15 shall—

16 (1) review the determination of fraud on which the reduction or sus-  
 17 pension is based; and

18 (2) transmit a recommendation to the head of the executive agency  
 19 whether the suspension or reduction should continue.

20 (h) REPORT.—The head of each executive agency who receives rec-  
 21 ommendations made by the remedy coordination official of the executive  
 22 agency to reduce or suspend payments under subsection (c) during a fiscal  
 23 year shall prepare for that year a report that contains the recommendations,  
 24 the actions taken on the recommendations and the reasons for those actions,  
 25 and an assessment of the effects of those actions on the Federal Govern-  
 26 ment. The report shall be available to any Member of Congress on request.

27 (i) RESTRICTION ON DELEGATION.—The head of an executive agency  
 28 may not delegate responsibilities under this section to an individual in a po-  
 29 sition below level IV of the Executive Schedule.

## 30 **CHAPTER 47—MISCELLANEOUS**

Sec.

4701. Determinations and decisions.

4702. Prohibition on release of contractor proposals.

4703. Validation of proprietary data restrictions.

4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government.

4705. Protection of contractor employees from reprisal for disclosure of certain information.

4706. Examination of facilities and records of contractor.

4707. Remission of liquidated damages.

4708. Payment of reimbursable indirect costs in cost-type research and development contracts  
 with educational institutions.

4709. Implementation of electronic commerce capability.

### 31 **§ 4701. Determinations and decisions**

32 (a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHOR-  
 33 IZED.—

1 (1) IN GENERAL.—Determinations and decisions required to be made  
 2 under this part by the head of an executive agency or provided in this  
 3 part or subtitle I of title 40 to be made by the Administrator of Gen-  
 4 eral Services or other agency head may be made for an individual pur-  
 5 chase or contract or, except for determinations or decisions made under  
 6 section 3106, chapters 33 and 37, and section 4702 of this title or to  
 7 the extent expressly prohibited by another law, for a class of purchases  
 8 or contracts.

9 (2) DELEGATION.— Except as provided in section 3303(a)(7) of this  
 10 title, and except as provided in section 121(d)(1) and (2) of title 40  
 11 with respect to the Administrator, the agency head, in the discretion,  
 12 and subject to the direction, of the agency head, may delegate powers  
 13 provided by this part or subtitle I of title 40, including the making of  
 14 determinations and decisions described in paragraph (1), to other offi-  
 15 cers or officials of the agency.

16 (3) FINALITY.—The determinations and decisions are final.

17 (b) WRITTEN FINDINGS.—

18 (1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or  
 19 decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title  
 20 shall be based on a written finding by the individual making the deter-  
 21 mination or decision. A finding under section 4503 or 4706(d)(2)(B)  
 22 shall set out facts and circumstances that support the determination  
 23 or decision.

24 (2) FINALITY.—Each finding referred to in paragraph (1) is final.

25 (3) MAINTAINING COPIES OF FINDINGS.—The head of an executive  
 26 agency shall maintain for a period of not less than 6 years a copy of  
 27 each finding referred to in paragraph (1) that is made by an individual  
 28 in that executive agency. The period begins on the date of the deter-  
 29 mination or decision to which the finding relates.

30 **§ 4702. Prohibition on release of contractor proposals**

31 (a) DEFINITION.—In this section, the term “proposal” means a proposal,  
 32 including a technical, management, or cost proposal, submitted by a con-  
 33 tractor in response to the requirements of a solicitation for a competitive  
 34 proposal.

35 (b) PROHIBITION.—A proposal in the possession or control of an execu-  
 36 tive agency may not be made available to any person under section 552 of  
 37 title 5.

38 (c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that  
 39 is set forth or incorporated by reference in a contract entered into between  
 40 the agency and the contractor that submitted the proposal.

1 **§ 4703. Validation of proprietary data restrictions**

2 (a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—  
3 A contract for property or services an executive agency enters into that pro-  
4 vides for the delivery of technical data shall provide that—

5 (1) a contractor or subcontractor at any tier shall be prepared to  
6 furnish to the contracting officer a written justification for any restric-  
7 tion the contractor or subcontractor asserts on the right of the Federal  
8 Government to use the data; and

9 (2) the contracting officer may review the validity of a restriction the  
10 contractor or subcontractor asserts under the contract on the right of  
11 the Government to use technical data furnished to the Government  
12 under the contract if the contracting officer determines that reasonable  
13 grounds exist to question the current validity of the asserted restriction  
14 and that the continued adherence to the asserted restriction by the  
15 Government would make it impracticable to procure the item competi-  
16 tively at a later time.

17 (b) CHALLENGE OF RESTRICTION.—If after a review the contracting offi-  
18 cer determines that a challenge to the asserted restriction is warranted, the  
19 contracting officer shall provide written notice to the contractor or subcon-  
20 tractor asserting the restriction. The notice shall state—

21 (1) the grounds for challenging the asserted restriction; and

22 (2) the requirement for a response within 60 days justifying the cur-  
23 rent validity of the asserted restriction.

24 (c) ADDITIONAL TIME FOR RESPONSES.—When a contractor or subcon-  
25 tractor asserting a restriction subject to this section submits to the con-  
26 tracting officer a written request showing the need for additional time to  
27 comply with the requirement to justify the current validity of the asserted  
28 restriction, the contracting officer shall provide appropriate additional time  
29 to adequately permit the justification to be submitted.

30 (d) MULTIPLE CHALLENGES.—When a party asserting a restriction re-  
31 ceives notices of challenges to restrictions on technical data from more than  
32 one contracting officer, and notifies each contracting officer of the existence  
33 of more than one challenge, the contracting officer initiating the earliest  
34 challenge, after consultation with the party asserting the restriction and the  
35 other contracting officers, shall formulate a schedule of responses to each  
36 of the challenges that will afford the party asserting the restriction with an  
37 equitable opportunity to respond to each challenge.

38 (e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

39 (1) NO RESPONSE SUBMITTED.—The contracting officer shall issue  
40 a decision pertaining to the validity of the asserted restriction if the

1 contractor or subcontractor does not submit a response under sub-  
2 section (b).

3 (2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justifica-  
4 tion submitted in response to the notice provided pursuant to sub-  
5 section (b), a contracting officer shall issue a decision or notify the  
6 party asserting the restriction of the time within which a decision will  
7 be issued.

8 (f) CLAIM DEEMED CLAIM WITHIN CHAPTER 69.—A claim pertaining to  
9 the validity of the asserted restriction that is submitted in writing to a con-  
10 tracting officer by a contractor or subcontractor at any tier is deemed to  
11 be a claim within the meaning of chapter 69 of this title.

12 (g) FINAL DISPOSITION OF CHALLENGE.—

13 (1) CHALLENGE IS SUSTAINED.—If the contracting officer’s chal-  
14 lenge to the restriction on the right of the Government to use technical  
15 data is sustained on final disposition—

16 (A) the restriction is cancelled; and

17 (B) if the asserted restriction is found not to be substantially  
18 justified, the contractor or subcontractor, as appropriate, is liable  
19 to the Government for payment of the cost to the Government of  
20 reviewing the asserted restriction and the fees and other expenses  
21 (as defined in section 2412(d)(2)(A) of title 28) the Government  
22 incurred in challenging the asserted restriction, unless special cir-  
23 cumstances would make the payment unjust.

24 (2) CHALLENGE NOT SUSTAINED.—If the contracting officer’s chal-  
25 lenge to the restriction on the right of the Government to use technical  
26 data is not sustained on final disposition, the Government—

27 (A) continues to be bound by the restriction; and

28 (B) is liable for payment to the party asserting the restriction  
29 for fees and other expenses (as defined in section 2412(d)(2)(A)  
30 of title 28) the party asserting the restriction incurred in defend-  
31 ing the asserted restriction if the challenge by the Government is  
32 found not to be made in good faith.

33 **§ 4704. Prohibition of contractors limiting subcontractor**  
34 **sales directly to Federal Government**

35 (a) CONTRACT RESTRICTIONS.—Each contract for the purchase of prop-  
36 erty or services made by an executive agency shall provide that the con-  
37 tractor will not—

38 (1) enter into an agreement with a subcontractor under the contract  
39 that has the effect of unreasonably restricting sales by the subcon-  
40 tractor directly to the Federal Government of any item or process (in-

1 including computer software) made or furnished by the subcontractor  
2 under the contract (or any follow-on production contract); or

3 (2) otherwise act to restrict unreasonably the ability of a subcon-  
4 tractor to make sales described in clause (1) to the Government.

5 (b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a  
6 contractor from asserting rights it otherwise has under law.

7 (c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not  
8 apply to a contract for an amount that is not greater than the simplified  
9 acquisition threshold.

10 (d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO  
11 OTHER PURCHASERS.—An agreement between the contractor in a contract  
12 for the acquisition of commercial items and a subcontractor under the con-  
13 tract that restricts sales by the subcontractor directly to persons other than  
14 the contractor may not be considered to unreasonably restrict sales by that  
15 subcontractor to the Government in violation of the provision included in  
16 the contract pursuant to subsection (a) if the agreement does not result in  
17 the Government being treated differently with regard to the restriction than  
18 any other prospective purchaser of the commercial items from that subcon-  
19 tractor.

20 **§ 4705. Protection of contractor employees from reprisal for**  
21 **disclosure of certain information**

22 (a) DEFINITIONS.—In this section—

23 (1) CONTRACT.—The term “contract” means a contract awarded by  
24 the head of an executive agency.

25 (2) CONTRACTOR.—The term “contractor” means a person awarded  
26 a contract with an executive agency.

27 (3) INSPECTOR GENERAL.—The term “Inspector General” means an  
28 Inspector General appointed under the Inspector General Act of 1978  
29 (5 App. U.S.C.).

30 (b) PROHIBITION OF REPRISALS.—An employee of a contractor may not  
31 be discharged, demoted, or otherwise discriminated against as a reprisal for  
32 disclosing to a Member of Congress or an authorized official of an executive  
33 agency or the Department of Justice information relating to a substantial  
34 violation of law related to a contract (including the competition for, or nego-  
35 tiation of, a contract).

36 (c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the  
37 individual has been subjected to a reprisal prohibited by subsection (a) may  
38 submit a complaint to the Inspector General of the executive agency. Unless  
39 the Inspector General determines that the complaint is frivolous, the Inspec-  
40 tor General shall investigate the complaint and, on completion of the inves-  
41 tigation, submit a report of the findings of the investigation to the indi-

1     vidual, the contractor concerned, and the head of the agency. If the execu-  
2     tive agency does not have an Inspector General, the duties of the Inspector  
3     General under this section shall be performed by an official the head of the  
4     executive agency designates.

5     (d) REMEDY AND ENFORCEMENT AUTHORITY.—

6         (1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head  
7     of an executive agency determines that a contractor has subjected an  
8     individual to a reprisal prohibited by subsection (a), the head of the  
9     executive agency may take one or more of the following actions:

10         (A) ABATEMENT.—Order the contractor to take affirmative ac-  
11     tion to abate the reprisal.

12         (B) REINSTATEMENT.—Order the contractor to reinstate the in-  
13     dividual to the position that the individual held before the reprisal,  
14     together with the compensation (including back pay), employment  
15     benefits, and other terms and conditions of employment that  
16     would apply to the individual in that position if the reprisal had  
17     not been taken.

18         (C) PAYMENT.—Order the contractor to pay the complainant an  
19     amount equal to the aggregate amount of all costs and expenses  
20     (including attorneys' fees and expert witnesses' fees) that the com-  
21     plainant reasonably incurred for, or in connection with, bringing  
22     the complaint regarding the reprisal, as the head of the executive  
23     agency determines.

24         (2) ENFORCEMENT ORDER.—When a contractor fails to comply with  
25     an order issued under paragraph (1), the head of the executive agency  
26     shall file an action for enforcement of the order in the United States  
27     district court for a district in which the reprisal was found to have oc-  
28     curred. In an action brought under this paragraph, the court may  
29     grant appropriate relief, including injunctive relief and compensatory  
30     and exemplary damages.

31         (3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected  
32     or aggrieved by an order issued under paragraph (1) may obtain review  
33     of the order's conformance with this subsection, and regulations issued  
34     to carry out this section, in the United States court of appeals for a  
35     circuit in which the reprisal is alleged in the order to have occurred.  
36     A petition seeking review must be filed no more than 60 days after the  
37     head of the agency issues the order. Review shall conform to chapter  
38     7 of title 5.

39     (e) SCOPE OF SECTION.—This section does not—

1 (1) authorize the discharge of, demotion of, or discrimination against  
 2 an employee for a disclosure other than a disclosure protected by sub-  
 3 section (a); or

4 (2) modify or derogate from a right or remedy otherwise available  
 5 to the employee.

6 **§ 4706. Examination of facilities and records of contractor**

7 (a) DEFINITION.—In this section, the term “records” includes books, doc-  
 8 uments, accounting procedures and practices, and other data, regardless of  
 9 type and regardless of whether the items are in written form, in the form  
 10 of computer data, or in any other form.

11 (b) AGENCY AUTHORITY.—

12 (1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—An authorized  
 13 representative of the head of an executive agency may inspect the plant  
 14 and audit the records of—

15 (A) a contractor performing a cost-reimbursement, incentive,  
 16 time-and-materials, labor-hour, or price-redeterminable contract,  
 17 or any combination of those contracts, the executive agency makes  
 18 under this part; and

19 (B) a subcontractor performing a cost-reimbursement, incentive,  
 20 time-and-materials, labor-hour, or price-redeterminable sub-  
 21 contract, or any combination of those subcontracts, under a con-  
 22 tract referred to in subparagraph (A).

23 (2) EXAMINATION OF RECORDS.—An authorized representative of  
 24 the head of an executive agency, to evaluate the accuracy, complete-  
 25 ness, and currency of certified cost or pricing data required to be sub-  
 26 mitted pursuant to chapter 35 of this title with respect to a contract  
 27 or subcontract, may examine all records of the contractor or subcon-  
 28 tractor related to—

29 (A) the proposal for the contract or subcontract;

30 (B) the discussions conducted on the proposal;

31 (C) pricing of the contract or subcontract; or

32 (D) performance of the contract or subcontract.

33 (c) SUBPENA POWER.—

34 (1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The  
 35 Inspector General of an executive agency appointed under section 3 or  
 36 8G of the Inspector General Act of 1978 (5 App. U.S.C.) or, on re-  
 37 quest of the head of an executive agency, the Director of the Defense  
 38 Contract Audit Agency (or any successor agency) of the Department  
 39 of Defense or the Inspector General of the General Services Adminis-  
 40 tration may require by subpoena the production of records of a con-

1 tractor, access to which is provided for that executive agency by sub-  
2 section (b).

3 (2) ENFORCEMENT OF SUBPENA.—A subpoena under paragraph (1),  
4 in the case of contumacy or refusal to obey, is enforceable by order of  
5 an appropriate United States district court.

6 (3) AUTHORITY NOT DELEGABLE.—The authority provided by para-  
7 graph (1) may not be delegated.

8 (4) REPORT.—In the year following a year in which authority pro-  
9 vided in paragraph (1) is exercised for an executive agency, the head  
10 of the executive agency shall submit to the Committee on Governmental  
11 Affairs of the Senate and the Committee on Government Operations of  
12 the House of Representatives a report on the exercise of the authority  
13 during the preceding year and the reasons why the authority was exer-  
14 cised in any instance.

15 (d) AUTHORITY OF COMPTROLLER GENERAL.—

16 (1) IN GENERAL.—Except as provided in paragraph (2), each con-  
17 tract awarded after using procedures other than sealed bid procedures  
18 shall provide that the Comptroller General and representatives of the  
19 Comptroller General may examine records of the contractor, or any of  
20 its subcontractors, that directly pertain to, and involve transactions re-  
21 lating to, the contract or subcontract.

22 (2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—  
23 Paragraph (1) does not apply to a contract or subcontract with a for-  
24 eign contractor or foreign subcontractor if the executive agency con-  
25 cerned determines, with the concurrence of the Comptroller General or  
26 the designee of the Comptroller General, that applying paragraph (1)  
27 to the contract or subcontract would not be in the public interest. The  
28 concurrence of the Comptroller General or the designee is not required  
29 when—

30 (A) the contractor or subcontractor is—

31 (i) the government of a foreign country or an agency of  
32 that government; or

33 (ii) precluded by the laws of the country involved from  
34 making its records available for examination; and

35 (B) the executive agency, after taking into account the price  
36 and availability of the property and services from United States  
37 sources, determines that the public interest would be best served  
38 by not applying paragraph (1).

39 (3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not  
40 require a contractor or subcontractor to create or maintain a record

1           that the contractor or subcontractor does not maintain in the ordinary  
2           course of business or pursuant to another law.

3           (e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An execu-  
4           tive agency may not perform an audit of indirect costs under a contract,  
5           subcontract, or modification before or after entering into the contract, sub-  
6           contract, or modification when the contracting officer determines that the  
7           objectives of the audit can reasonably be met by accepting the results of  
8           an audit that was conducted by another department or agency of the Fed-  
9           eral Government within one year preceding the date of the contracting offi-  
10          cer’s determination.

11          (f) EXPIRATION OF AUTHORITY.—The authority of an executive agency  
12          under subsection (b) and the authority of the Comptroller General under  
13          subsection (d) shall expire three years after final payment under the con-  
14          tract or subcontract.

15          (g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not  
16          apply to the following contracts:

17               (1) CONTRACTS FOR UTILITY SERVICES.—Contracts for utility serv-  
18               ices at rates not exceeding those established to apply uniformly to the  
19               public, plus any applicable reasonable connection charge.

20               (2) CONTRACT OR SUBCONTRACT NOT GREATER THAN SIMPLIFIED  
21               ACQUISITION THRESHOLD.—A contract or subcontract that is not  
22               greater than the simplified acquisition threshold.

23          (h) ELECTRONIC FORM ALLOWED.—This section does not preclude a con-  
24          tractor from duplicating or storing original records in electronic form.

25          (i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not  
26          require a contractor or subcontractor to provide original records in an audit  
27          carried out pursuant to this section if the contractor or subcontractor pro-  
28          vides photographic or electronic images of the original records and meets  
29          the following requirements:

30               (1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or  
31               subcontractor has established procedures to ensure that the imaging  
32               process preserves the integrity, reliability, and security of the original  
33               records.

34               (2) INDEXING SYSTEM MAINTAINED.—The contractor or subcon-  
35               tractor maintains an effective indexing system to permit timely and  
36               convenient access to the imaged records.

37               (3) ORIGINAL RECORDS RETAINED.—The contractor or subcon-  
38               tractor retains the original records for a minimum of one year after  
39               imaging to permit periodic validation of the imaging systems.

1 **§ 4707. Remission of liquidated damages**

2 When a contract made on behalf of the Federal Government by the head  
 3 of a Federal agency, or by an authorized officer of the agency, includes a  
 4 provision for liquidated damages for delay, the Secretary of the Treasury  
 5 on recommendation of the head of the agency may remit any part of the  
 6 damages as the Secretary believes is just and equitable.

7 **§ 4708. Payment of reimbursable indirect costs in cost-type**  
 8 **research and development contracts with edu-**  
 9 **ational institutions**

10 A cost-type research and development contract (including a grant) with  
 11 a university, college, or other educational institution may provide for pay-  
 12 ment of reimbursable indirect costs on the basis of predetermined fixed-per-  
 13 centage rates applied to the total of the reimbursable direct costs incurred  
 14 or to an element of the total of the reimbursable direct costs.

15 **§ 4709. Implementation of electronic commerce capability**

16 (a) **ROLE OF HEAD OF EXECUTIVE AGENCY.**—The head of each execu-  
 17 tive agency shall implement the electronic commerce capability required by  
 18 section 2301 of this title. In implementing the capability, the head of an  
 19 executive agency shall consult with the Administrator for Federal Procure-  
 20 ment Policy.

21 (b) **PROGRAM MANAGER.**—The head of each executive agency shall des-  
 22 ignate a program manager to implement the electronic commerce capability  
 23 for the agency. The program manager reports directly to an official at a  
 24 level not lower than the senior procurement executive designated for the  
 25 agency under section 1702(e) of this title.

26 **Subtitle II—Other Advertising and Contract**  
 27 **Provisions**

Chapter	Sec.
<b>61. Advertising</b> .....	<b>6101</b>
<b>63. General Contract Provisions</b> .....	<b>6301</b>
<b>65. Contracts for Materials, Supplies, Articles, and Equipment</b> <b>Exceeding \$10,000.</b> .....	<b>6501</b>
<b>67. Service Contract Labor Standards</b> .....	<b>6701</b>
<b>69. Contract Disputes</b> .....	<b>6901</b>

28 **CHAPTER 61—ADVERTISING**

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

29 **§ 6101. Advertising requirement for Federal Government**  
 30 **purchases and sales**

31 (a) **DEFINITIONS.**—In this section—

32 (1) **APPROPRIATION.**—The term “appropriation” includes amounts  
 33 made available by legislation under section 9104 of title 31.

1 (2) FEDERAL GOVERNMENT AND GOVERNMENT.—The terms “Fed-  
2 eral Government” and “Government” include the government of the  
3 District of Columbia.

4 (b) PURCHASES.—

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

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

11 (A) the amount involved in any one case does not exceed  
12 \$25,000;

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

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

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

19 (i) of a technical and professional nature; or

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

22 (e) SALES.—Except when otherwise authorized by law or when the rea-  
23 sonable value involved in any one case does not exceed \$500, sales and con-  
24 tracts of sale by the Government are governed by the requirements of this  
25 section for advertising.

26 (d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—  
27 For wholly owned Government corporations, this section applies only to ad-  
28 ministrative transactions.

29 **§ 6102. Exceptions from advertising requirement**

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

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

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

1 (d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section  
2 6101 of this title does not apply to the International Committee of Aerial  
3 Legal Experts with respect to necessary stenographic and other services by  
4 contract.

5 (e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equip-  
6 ment and the procurement of services for all branches under the Architect  
7 of the Capitol may be made in the open market according to common busi-  
8 ness practice, without compliance with section 6101 of this title, when the  
9 aggregate amount of the purchase or the service does not exceed \$25,000  
10 in any instance.

11 (f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and  
12 other forest products produced by Indian enterprises from forests on Indian  
13 reservations may be sold under regulations the Secretary of the Interior pre-  
14 scribes, without compliance with section 6101 of this title.

15 (g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not  
16 apply to purchases and contracts for supplies or services for any office of  
17 the House of Representatives.

18 (h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congres-  
19 sional Budget Office may enter into agreements or contracts without regard  
20 to section 6101 of this title.

21 **§ 6103. Opening of bids**

22 Whenever proposals for supplies have been solicited, the parties respond-  
23 ing to the solicitation shall be notified of the time and place of the opening  
24 of the bids, and be permitted to be present either in person or by attorney.  
25 A record of each bid shall be made at the time and place of the opening  
26 of the bids.

27 **CHAPTER 63—GENERAL CONTRACT PROVISIONS**

Sec.

- 6301. Authorization requirement.
- 6302. Contracts for fuel made by Secretary of the Army.
- 6303. Certain contracts limited to appropriated amounts.
- 6304. Certain contracts limited to one-year term.
- 6305. Prohibition on transfer of contract and certain allowable assignments.
- 6306. Prohibition on Members of Congress making contracts with Federal Government.
- 6307. Contracts with Government-owned establishments and availability of appropriations.
- 6308. Contracts for transportation of Federal Government securities.
- 6309. Honorable discharge certificate in lieu of birth certificate.

28 **§ 6301. Authorization requirement**

29 (a) IN GENERAL.—A contract or purchase on behalf of the Federal Gov-  
30 ernment shall not be made unless the contract or purchase is authorized by  
31 law or is under an appropriation adequate to its fulfillment.

32 (b) EXCEPTION.—

33 (1) DEFINITION.—In this subsection, the term “defined Secretary”  
34 means—

35 (A) the Secretary of Defense; or

1 (B) the Secretary of Transportation with respect to the Coast  
 2 Guard when the Coast Guard is not operating as a service in the  
 3 Navy.

4 (2) IN GENERAL.—Subsection (a) does not apply to a contract or  
 5 purchase made by a defined Secretary for clothing, subsistence, forage,  
 6 fuel, quarters, transportation, or medical and hospital supplies.

7 (3) CURRENT YEAR LIMITATION.—A contract or purchase made by  
 8 a defined Secretary under this subsection may not exceed the neces-  
 9 sities of the current year.

10 (4) REPORTS.—The defined Secretary shall immediately advise Con-  
 11 gress when authority is exercised under this subsection. The defined  
 12 Secretary shall report quarterly on the estimated obligations incurred  
 13 pursuant to the authority granted in this subsection.

14 (c) SPECIAL RULE FOR PURCHASE OF LAND.—Land may not be pur-  
 15 chased by the Government unless the purchase is authorized by law.

16 **§ 6302. Contracts for fuel made by Secretary of the Army**

17 The Secretary of the Army, when the Secretary believes it is in the inter-  
 18 est of the Federal Government, may enter into contracts and incur obliga-  
 19 tions for fuel in sufficient quantities to meet the requirements for one year  
 20 without regard to the current fiscal year. Funds appropriated for the cur-  
 21 rent fiscal year or the following fiscal year may be used to pay for supplies  
 22 delivered under a contract made pursuant to this section.

23 **§ 6303. Certain contracts limited to appropriated amounts**

24 A contract to erect, repair, or furnish a public building, or to make any  
 25 public improvement, shall not be made on terms requiring the Federal Gov-  
 26 ernment to pay more than the amount specifically appropriated for the ac-  
 27 tivity covered by the contract.

28 **§ 6304. Certain contracts limited to one-year term**

29 Except as otherwise provided, an executive department shall not make a  
 30 contract for stationery or other supplies for a term longer than one year  
 31 from the time the contract is made.

32 **§ 6305. Prohibition on transfer of contract and certain al-  
 33 lowable assignments**

34 (a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party  
 35 to whom the Federal Government gives a contract or order may not transfer  
 36 the contract or order, or any interest in the contract or order, to another  
 37 party. A purported transfer in violation of this subsection annuls the con-  
 38 tract so far as the Government is concerned, except that all rights of action  
 39 for breach of contract are reserved to the Government.

40 (b) ASSIGNMENT.—

1 (1) IN GENERAL.—Notwithstanding subsection (a) and in accordance  
2 with the requirements of this subsection, amounts due from the Gov-  
3 ernment under a contract may be assigned to a bank, trust company,  
4 Federal lending agency, or other financing institution.

5 (2) MINIMUM AMOUNT.—This subsection applies only to a contract  
6 under which the aggregate amounts due from the Government total at  
7 least \$1,000.

8 (3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made  
9 under this subsection if the contract forbids the assignment.

10 (4) FULL BALANCE DUE.—Unless otherwise expressly permitted by  
11 the contract, an assignment under this subsection must cover the bal-  
12 ance of all amounts due from the Government under the contract.

13 (5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by  
14 the contract, an assignment under this subsection may not be made to  
15 more than one party or be subject to further assignment, except that  
16 assignment may be made to one party as agent or trustee for two or  
17 more parties.

18 (6) WRITTEN NOTICE.—The assignee of an assignment under this  
19 subsection shall file written notice and a true copy of the instrument  
20 of assignment with—

21 (A) the contracting officer or head of the officer's department  
22 or agency;

23 (B) the surety on any bond connected with the contract; and

24 (C) the disbursing officer, if any, designated in the contract to  
25 make payment.

26 (7) VALIDITY.—Notwithstanding any law governing the validity of  
27 assignments to the contrary, an assignment under this subsection is a  
28 valid assignment for all purposes.

29 (8) NO REFUND TO COVER ASSIGNOR'S LIABILITY.—The assignee of  
30 an assignment under this subsection is not liable to make any refund  
31 to the Government because of an assignor's liability to the Government,  
32 whether that liability arises from the contract or independently.

33 (9) AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.—

34 (A) CONTRACT PROVISION.—A contract of the Department of  
35 Defense, the General Services Administration, the Department of  
36 Energy, or another department or agency of the Government des-  
37 ignated by the President may provide or be amended without con-  
38 sideration to provide, on a determination of need by the President,  
39 that payments made to an assignee under the contract are not  
40 subject to reduction or setoff. Each determination of need by the

1 President under this subparagraph must be published in the Fed-  
2 eral Register.

3 (B) CARRYING OUT CONTRACT PROVISION.—When a “no reduc-  
4 tion or setoff” provision as described in subparagraph (A) is in-  
5 cluded in a contract, payments to the assignee are not subject to  
6 reduction or setoff for an assignor’s liability arising—

7 (i) independently of the contract;

8 (ii) on account of renegotiation under a renegotiation stat-  
9 ute or under a statutory renegotiation article in the contract;

10 (iii) on account of fines;

11 (iv) on account of penalties; or

12 (v) on account of taxes, Social Security contributions, or  
13 the withholding or non-withholding of taxes or Social Security  
14 contributions, whether arising from or independently of the  
15 contract.

16 (C) LIMITATION.—Subparagraph (B)(iv) does not apply to  
17 amounts which may be collected or withheld from the assignor in  
18 accordance with or for failure to comply with the terms of the con-  
19 tract.

20 **§ 6306. Prohibition on Members of Congress making con-**  
21 **tracts with Federal Government**

22 (a) IN GENERAL.—A Member of Congress may not enter into or benefit  
23 from a contract or any part of a contract with the Federal Government.

24 (b) EXEMPTIONS.—

25 (1) IN GENERAL.—Subsection (a) does not apply to contracts that  
26 the Secretary of Agriculture may enter into with farmers.

27 (2) CERTAIN ACTS.—Subsection (a) does not apply to a contract en-  
28 tered into under—

29 (A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

30 (B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

31 (C) the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.).

32 (3) PUBLIC RECORD.—An exemption under this subsection shall be  
33 made a matter of public record.

34 **§ 6307. Contracts with Government-owned establishments**  
35 **and availability of appropriations**

36 An order or contract placed with a Government-owned establishment for  
37 work, material, or the manufacture of material pertaining to an approved  
38 project is deemed to be an obligation in the same manner that a similar  
39 order or contract placed with a commercial manufacturer or private con-  
40 tractor is an obligation. Appropriations remain available to pay an obliga-  
41 tion to a Government-owned establishment just as appropriations remain

1 available to pay an obligation to a commercial manufacturer or private con-  
2 tractor.

3 **§ 6308. Contracts for transportation of Federal Government**  
4 **securities**

5 When practicable, a contract for transporting bullion, cash, or securities  
6 of the Federal Government shall be awarded to the lowest responsible bidder  
7 after notice to all parties with means of transportation.

8 **§ 6309. Honorable discharge certificate in lieu of birth cer-**  
9 **tificate**

10 (a) IN GENERAL.—An employer described in subsection (b) may not deny  
11 employment, on account of failure to produce a birth certificate, to an indi-  
12 vidual who submits, in lieu of the birth certificate, an honorable discharge  
13 certificate (or certificate issued in lieu of an honorable discharge certificate)  
14 from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the  
15 United States, unless the honorable discharge certificate shows on its face  
16 that the individual may have been an alien at the time of its issuance.

17 (b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to  
18 in subsection (a) is an employer—

19 (1) engaged in—

20 (A) the production, maintenance, or storage of arms, armament,  
21 ammunition, implements of war, munitions, machinery, tools,  
22 clothing, food, fuel, or any articles or supplies, or parts or ingredi-  
23 ents of any articles or supplies; or

24 (B) the construction, reconstruction, repair, or installation of a  
25 building, plant, structure, or facility; and

26 (2) engaged in the activity described in clause (1) under—

27 (A) a contract with the Federal Government; or

28 (B) any contract that the President, the Secretary of the Army,  
29 the Secretary of the Air Force, the Secretary of the Navy, or the  
30 Secretary of Transportation certifies to the employer to be nec-  
31 essary to the national defense.

32 **CHAPTER 65—CONTRACTS FOR MATERIALS, SUPPLIES,**  
33 **ARTICLES, AND EQUIPMENT EXCEEDING \$10,000**

Sec.

- 6501. Definitions.
- 6502. Required contract terms.
- 6503. Breach or violation of required contract terms.
- 6504. Three-year prohibition on new contracts in case of breach or violation.
- 6505. Exclusions.
- 6506. Authority to make exceptions.
- 6507. Administrative provisions.
- 6508. Hearing authority and procedures.
- 6509. Other procedures.
- 6510. Manufacturers and regular dealers.
- 6511. Effect on other law.

1    **§ 6501. Definitions**

2       In this chapter—

3           (1) AGENCY OF THE UNITED STATES.—The term “agency of the  
4       United States” means an executive department, independent establish-  
5       ment, or other agency or instrumentality of the United States, the Dis-  
6       trict of Columbia, or a corporation in which all stock is beneficially  
7       owned by the Federal Government.

8           (2) PERSON.—The term “person” includes one or more legal rep-  
9       resentatives, trustees, trustees in cases under title 11, or receivers.

10    **§ 6502. Required contract terms**

11       A contract made by an agency of the United States for the manufacture  
12       or furnishing of materials, supplies, articles, or equipment, in an amount  
13       exceeding \$10,000, shall include the following representations and stipula-  
14       tions:

15           (1) MINIMUM WAGE TO BE PAID.—All individuals employed by the  
16       contractor in the manufacture or furnishing of materials, supplies, arti-  
17       cles, or equipment under the contract will be paid, without subsequent  
18       deduction or rebate on any account, not less than the prevailing min-  
19       imum wage, as determined by the Secretary of Labor, for individuals  
20       employed in similar work or in the particular or similar industries or  
21       groups of industries currently operating in the locality in which the ma-  
22       terials, supplies, articles, or equipment are to be manufactured or fur-  
23       nished under the contract, except that this clause applies only to pur-  
24       chases or contracts relating to industries that have been the subject  
25       matter of a determination by the Secretary.

26           (2) MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.—In-  
27       dividuals employed by the contractor in the manufacture or furnishing  
28       of materials, supplies, articles, or equipment under the contract shall  
29       not be permitted to work in excess of 40 hours in any one week, except  
30       that this clause does not apply to an employer who has entered into  
31       an agreement with employees pursuant to section 7(b)(1) or (2) of the  
32       Fair Labor Standards Act of 1938 (29 U.S.C. 207(b)(1) or (2)).

33           (3) INELIGIBLE EMPLOYEES.—Male individuals under 16 years of  
34       age, female individuals under 18 years of age, and convict labor will  
35       not be employed by the contractor in the manufacture or furnishing of  
36       materials, supplies, articles, or equipment under the contract, except  
37       that this clause, or other law or executive order containing similar pro-  
38       hibitions against the purchase of goods by the Federal Government,  
39       does not apply to convict labor that satisfies the conditions of section  
40       1761(c) of title 18.

1           (4) STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CON-  
 2           TRACT PERFORMED.—Materials, supplies, articles, or equipment will  
 3           not be manufactured or furnished under the contract and no part of  
 4           the contract will otherwise be performed in plants, factories, buildings,  
 5           or surroundings, or under working conditions, that are unsanitary, haz-  
 6           ardous, or dangerous to the health and safety of employees engaged in  
 7           the performance of the contract. Compliance with the safety, sanitary,  
 8           and factory inspection laws of the State in which the work or part of  
 9           the work is to be performed is prima facie evidence of compliance with  
 10          this clause.

11       **§ 6503. Breach or violation of required contract terms**

12          (a) APPLICABLE BREACH OR VIOLATION.—This section applies in case of  
 13          breach or violation of a representation or stipulation included in a contract  
 14          under section 6502 of this title.

15          (b) LIQUIDATED DAMAGES.—In addition to damages for any other breach  
 16          of the contract, the party responsible for a breach or violation described in  
 17          subsection (a) is liable to the Federal Government for the following liq-  
 18          uidated damages:

19               (1) An amount equal to the sum of \$10 per day for each male indi-  
 20               vidual under 16 years of age and each female individual under 18 years  
 21               of age and each convict laborer knowingly employed in the performance  
 22               of the contract.

23               (2) An amount equal to the sum of each underpayment of wages due  
 24               an employee engaged in the performance of the contract, including any  
 25               underpayments arising from deductions or rebates.

26          (c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to the  
 27          Government being entitled to damages described in subsection (b), the agen-  
 28          cy of the United States that made the contract may cancel the contract and  
 29          make open-market purchases or make other contracts for the completion of  
 30          the original contract, charging any additional cost to the original contractor.

31          (d) RECOVERY OF AMOUNTS DUE.—An amount due the Government be-  
 32          cause of a breach or violation described in subsection (a) may be withheld  
 33          from any amounts owed the contractor under the contract or may be recov-  
 34          ered in a suit brought by the Attorney General.

35          (e) EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.—An  
 36          amount withheld or recovered under subsection (d) that is based on an un-  
 37          derpayment of wages as described in subsection (b)(2) shall be held in a  
 38          special deposit account. On order of the Secretary of Labor, the amount  
 39          shall be paid directly to the underpaid employee on whose account the  
 40          amount was withheld or recovered. However, an employee's claim for pay-  
 41          ment under this subsection may be entertained only if made within one year

1 from the date of actual notice to the contractor of the withholding or recov-  
 2 ery.

3 **§ 6504. Three-year prohibition on new contracts in case of**  
 4 **breach or violation**

5 (a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to  
 6 each agency of the United States a list containing the names of persons  
 7 found by the Secretary of Labor to have breached or violated a representa-  
 8 tion or stipulation included in a contract under section 6502 of this title.

9 (b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends oth-  
 10 erwise, a contract described in section 6502 of this title may not be awarded  
 11 to a person named on the list under subsection (a) of this section, or to  
 12 an entity in which the person has a controlling interest, until three years  
 13 have elapsed from the date of the determination by the Secretary of Labor  
 14 that a breach or violation occurred.

15 **§ 6505. Exclusions**

16 (a) ITEMS AVAILABLE IN THE OPEN MARKET.—This chapter does not  
 17 apply to the purchase of materials, supplies, articles, or equipment that may  
 18 usually be bought in the open market.

19 (b) PERISHABLES AND AGRICULTURAL PRODUCTS.—This chapter does  
 20 not apply to any of the following:

21 (1) Perishables, including dairy, livestock and nursery products.

22 (2) Agricultural or farm products processed for first sale by the  
 23 original producers.

24 (3) Contracts made by the Secretary of Agriculture for the purchase  
 25 of agricultural commodities or products of agricultural commodities.

26 (c) CARRIAGE OF FREIGHT OR PERSONNEL.—This chapter may not be  
 27 construed to apply to—

28 (1) the carriage of freight or personnel by vessel, airplane, bus,  
 29 truck, express, or railway line where published tariff rates are in effect;  
 30 or

31 (2) common carriers subject to the Communications Act of 1934 (47  
 32 U.S.C. 151 et seq.).

33 **§ 6506. Authority to make exceptions**

34 (a) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may  
 35 suspend any of the representations and stipulations contained in section  
 36 6502 of this title whenever, in the President's judgment, suspension is in  
 37 the public interest.

38 (b) DUTY OF THE SECRETARY OF LABOR TO MAKE EXCEPTIONS.—  
 39 When the head of an agency of the United States makes a written finding  
 40 that the inclusion of representations or stipulations under section 6502 of  
 41 this title in a proposal or contract will seriously impair the conduct of Fed-

1 eral Government business, the Secretary of Labor shall make exceptions in  
2 specific cases or otherwise when justice or the public interest will be served.

3 (c) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CON-  
4 TRACTS.—When an agency of the United States and a contractor jointly  
5 recommend, the Secretary may modify the terms of an existing contract  
6 with respect to minimum wages and maximum hours of labor as the Sec-  
7 retary finds necessary and proper in the public interest or to prevent injus-  
8 tice and undue hardship.

9 (d) AUTHORITY OF THE SECRETARY TO PRESCRIBE REGULATIONS.—The  
10 Secretary may prescribe regulations to allow reasonable limitations, vari-  
11 ations, tolerances, and exemptions in the application of this chapter to con-  
12 tractors, including with respect to minimum wages and maximum hours of  
13 labor.

14 (e) RATE OF PAY FOR OVERTIME.—When the Secretary permits an incre-  
15 ase in the maximum hours of labor stipulated in a contract, the Sec-  
16 retary shall set a rate of pay for overtime. The overtime rate must be at  
17 least one and one-half times the basic hourly rate.

#### 18 **§ 6507. Administrative provisions**

19 (a) IN GENERAL.—The Secretary of Labor shall administer this chapter.

20 (b) USE OF GOVERNMENT OFFICERS AND EMPLOYEES.—The Secretary  
21 shall use Federal officers and employees and, with a State’s consent, State  
22 and local officers and employees as the Secretary finds necessary to assist  
23 in the administration of this chapter.

24 (c) APPOINTMENTS.—The Secretary shall appoint an administrative offi-  
25 cer and attorneys, experts, and other employees from time to time as the  
26 Secretary finds necessary for the administration of this chapter. The ap-  
27 pointments are subject to chapter 51 and subchapter III of chapter 53 of  
28 title 5 and other law applicable to the employment and compensation of offi-  
29 cers and employees of the Federal Government.

30 (d) INVESTIGATIONS.—The Secretary, or an authorized representative of  
31 the Secretary, may make investigations and findings as provided in this  
32 chapter and may, in any part of the United States, prosecute an inquiry  
33 necessary to carry out this chapter.

34 (e) REGULATIONS.—The Secretary may make, amend, and rescind regu-  
35 lations as necessary to carry out this chapter.

#### 36 **§ 6508. Hearing authority and procedures**

37 (a) AUTHORITY TO HOLD HEARINGS.—The Secretary of Labor or an im-  
38 partial representative designated by the Secretary may hold hearings when  
39 there is a complaint of breach or violation of a representation or stipulation  
40 included in a contract under section 6502 of this title. The Secretary may  
41 initiate the hearings on the Secretary’s own motion or on the application

1 of a person affected by the ruling of an agency of the United States relating  
2 to a proposal or contract under this chapter.

3 (b) ORDERS TO COMPEL TESTIMONY.—The Secretary or an impartial  
4 representative designated by the Secretary may issue orders requiring wit-  
5 nesses to attend hearings held under this section and to produce evidence  
6 and testify under oath. Witnesses shall be paid fees and mileage at the same  
7 rates as witnesses in courts of the United States.

8 (c) ENFORCEMENT OF ORDERS.—If a person refuses or fails to obey an  
9 order issued under subsection (b), the Secretary or an impartial representa-  
10 tive designated by the Secretary may bring an action to enforce the order  
11 in a district court of the United States or in the district court of a territory  
12 or possession of the United States. A court has jurisdiction to enforce the  
13 order if the inquiry is being carried out within the court’s judicial district  
14 or if the person is found or resides or transacts business within the court’s  
15 judicial district. The court may issue an order requiring the person to obey  
16 the order issued under subsection (b), and the court may punish any further  
17 refusal or failure as contempt of court.

18 (d) FINDINGS OF FACT.—After notice and a hearing, the Secretary or an  
19 impartial representative designated by the Secretary shall make findings of  
20 fact. The findings are conclusive for agencies of the United States. If sup-  
21 ported by a preponderance of the evidence, the findings are conclusive in  
22 any court of the United States.

23 (e) DECISIONS.—The Secretary or an impartial representative designated  
24 by the Secretary may make decisions, based on findings of fact, that are  
25 considered necessary to enforce this chapter.

## 26 **§ 6509. Other procedures**

27 (a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Not-  
28 withstanding section 553 of title 5, subchapter II of chapter 5 and chapter  
29 7 of title 5 are applicable in the administration of sections 6501–6505,  
30 6507, 6508, and 6511 of this title.

31 (b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of  
32 representations and stipulations in a contract under section 6502 of this  
33 title, an interested person has the right of judicial review of any legal ques-  
34 tion which might otherwise be raised, including wage determinations and the  
35 interpretation of the terms “locality” and “open market”.

36 (c) WAGE DETERMINATIONS.—

37 (1) RECORD AND HEARING REQUIREMENTS.—A wage determination  
38 under section 6502(1) of this title shall be made on the record after  
39 opportunity for a hearing.

40 (2) JUDICIAL REVIEW.—A person adversely affected or aggrieved by  
41 a wage determination under section 6502(1) of this title has the right

1 of judicial review of the determination, or of the applicability of the de-  
 2 termination, within 90 days after the determination is made, in the  
 3 manner provided by chapter 7 of title 5. A person adversely affected  
 4 or aggrieved by a wage determination is deemed to include a person  
 5 in an industry to which the determination applies that is a supplier of  
 6 material, supplies, articles, or equipment that are purchased or in-  
 7 tended to be purchased by the Federal Government from any source.

8 **§ 6510. Manufacturers and regular dealers**

9 (a) **PRESCRIBING STANDARDS.**—The Secretary of Labor may prescribe,  
 10 in regulations, standards for determining whether a contractor is a manu-  
 11 facturer or regular dealer with respect to materials, supplies, articles, or  
 12 equipment to be manufactured or furnished under, or used in the perform-  
 13 ance of, a contract entered into by an agency of the United States.

14 (b) **JUDICIAL REVIEW.**—An interested person has the right of judicial re-  
 15 view of any legal question relating to interpretation of the terms “regular  
 16 dealer” and “manufacturer” as defined pursuant to subsection (a).

17 **§ 6511. Effect on other law**

18 This chapter may not be construed to modify or amend the following pro-  
 19 visions:

- 20 (1) Chapter 83 of this title.
- 21 (2) Subchapter IV of chapter 31 of title 40.
- 22 (3) Chapter 307 of title 18.

23 **CHAPTER 67—SERVICE CONTRACT LABOR STANDARDS**

Sec.

- 6701. Definitions.
- 6702. Contracts to which this chapter applies.
- 6703. Required contract terms.
- 6704. Limitation on minimum wage.
- 6705. Violations.
- 6706. Three-year prohibition on new contracts in case of violation.
- 6707. Enforcement and administration of chapter.

24 **§ 6701. Definitions**

25 In this chapter—

26 (1) **COMPENSATION.**—The term “compensation” means any of the  
 27 payments or fringe benefits described in section 6703 of this title.

28 (2) **SERVICE EMPLOYEE.**—The term “service employee”—

29 (A) means an individual engaged in the performance of a con-  
 30 tract made by the Federal Government and not exempted under  
 31 section 6702(b) of this title, whether negotiated or advertised, the  
 32 principal purpose of which is to furnish services in the United  
 33 States;

34 (B) includes an individual without regard to any contractual re-  
 35 lationship alleged to exist between the individual and a contractor  
 36 or subcontractor; but

1 (C) does not include an individual employed in a bona fide execu-  
 2 tive, administrative, or professional capacity, as those terms are  
 3 defined in part 541 of title 29, Code of Federal Regulations.

4 (3) UNITED STATES.—The term “United States”—

5 (A) includes any State of the United States, the District of Co-  
 6 lumbia, Puerto Rico, the Virgin Islands, the outer Continental  
 7 Shelf as defined in the Outer Continental Shelf Lands Act (43  
 8 U.S.C. § 1331 et seq.), American Samoa, Guam, Wake Island,  
 9 Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Is-  
 10 land; but

11 (B) does not include any other territory under the jurisdiction  
 12 of the United States or any United States base or possession with-  
 13 in a foreign country.

14 **§ 6702. Contracts to which this chapter applies**

15 (a) IN GENERAL.—Except as provided in subsection (b), this chapter ap-  
 16 plies to any contract or bid specification for a contract, whether negotiated  
 17 or advertised, that—

18 (1) is made by the Federal Government or the District of Columbia;

19 (2) involves an amount exceeding \$2,500; and

20 (3) has as its principal purpose the furnishing of services in the  
 21 United States through the use of service employees.

22 (b) EXEMPTIONS.—This chapter does not apply to—

23 (1) a contract of the Government or the District of Columbia for the  
 24 construction, alteration, or repair, including painting and decorating, of  
 25 public buildings or public works;

26 (2) any work required to be done in accordance with chapter 65 of  
 27 this title;

28 (3) a contract for the carriage of freight or personnel by vessel, air-  
 29 plane, bus, truck, express, railway line or oil or gas pipeline where pub-  
 30 lished tariff rates are in effect;

31 (4) a contract for the furnishing of services by radio, telephone, tele-  
 32 graph, or cable companies, subject to the Communications Act of 1934  
 33 (47 U.S.C. 151 et seq.);

34 (5) a contract for public utility services, including electric light and  
 35 power, water, steam, and gas;

36 (6) an employment contract providing for direct services to a Federal  
 37 agency by an individual; or

38 (7) a contract with the United States Postal Service, the principal  
 39 purpose of which is the operation of postal contract stations.

1    **§ 6703. Required contract terms**

2       A contract to which this chapter applies under section 6702 of this title  
3 shall contain the following terms:

4           (1) **MINIMUM WAGE.**—The contract shall contain a provision speci-  
5 fying the minimum wage to be paid to each class of service employee  
6 engaged in the performance of the contract or any subcontract, as de-  
7 termined by the Secretary of Labor or the Secretary’s authorized rep-  
8 resentative, in accordance with prevailing rates in the locality, or,  
9 where a collective-bargaining agreement covers the service employees,  
10 in accordance with the rates provided for in the agreement, including  
11 prospective wage increases provided for in the agreement as a result  
12 of arm’s length negotiations. In any case the minimum wage may not  
13 be less than the minimum wage specified in section 6704 of this title.

14           (2) **FRINGE BENEFITS.**—The contract shall contain a provision  
15 specifying the fringe benefits to be provided to each class of service em-  
16 ployee engaged in the performance of the contract or any subcontract,  
17 as determined by the Secretary or the Secretary’s authorized represent-  
18 ative to be prevailing in the locality, or, where a collective-bargaining  
19 agreement covers the service employees, to be provided for under the  
20 agreement, including prospective fringe benefit increases provided for  
21 in the agreement as a result of arm’s-length negotiations. The fringe  
22 benefits shall include medical or hospital care, pensions on retirement  
23 or death, compensation for injuries or illness resulting from occupa-  
24 tional activity, or insurance to provide any of the foregoing, unemploy-  
25 ment benefits, life insurance, disability and sickness insurance, accident  
26 insurance, vacation and holiday pay, costs of apprenticeship or other  
27 similar programs and other bona fide fringe benefits not otherwise re-  
28 quired by Federal, State, or local law to be provided by the contractor  
29 or subcontractor. The obligation under this paragraph may be dis-  
30 charged by furnishing any equivalent combinations of fringe benefits or  
31 by making equivalent or differential payments in cash under regula-  
32 tions established by the Secretary.

33           (3) **WORKING CONDITIONS.**—The contract shall contain a provision  
34 specifying that no part of the services covered by this chapter may be  
35 performed in buildings or surroundings or under working conditions,  
36 provided by or under the control or supervision of the contractor or any  
37 subcontractor, which are unsanitary or hazardous or dangerous to the  
38 health or safety of service employees engaged to provide the services.

39           (4) **NOTICE.**—The contract shall contain a provision specifying that  
40 on the date a service employee begins work on a contract to which this  
41 chapter applies, the contractor or subcontractor will deliver to the em-

1           employee a notice of the compensation required under paragraphs (1) and  
2           (2), on a form prepared by the Federal agency, or will post a notice  
3           of the required compensation in a prominent place at the worksite.

4           (5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYS-  
5           TEMS.—The contract shall contain a statement of the rates that would  
6           be paid by the Federal agency to each class of service employee if sec-  
7           tion 5332 or 5341 of title 5 were applicable to them. The Secretary  
8           shall give due consideration to these rates in making the wage and  
9           fringe benefit determinations specified in this section.

#### 10   **§ 6704. Limitation on minimum wage**

11           (a) IN GENERAL.—A contractor that makes a contract with the Federal  
12           Government, the principal purpose of which is to furnish services through  
13           the use of service employees, and any subcontractor, may not pay less than  
14           the minimum wage specified under section 6(a)(1) of the Fair Labor Stand-  
15           ards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in per-  
16           forming work on the contract.

17           (b) VIOLATIONS.—Sections 6705–6707(d) of this title are applicable to a  
18           violation of this section.

#### 19   **§ 6705. Violations**

20           (a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a viola-  
21           tion of a contract provision required under section 6703(1) or (2) of this  
22           title or a violation of section 6704 of this title is liable for an amount equal  
23           to the sum of any deduction, rebate, refund, or underpayment of compensa-  
24           tion due any employee engaged in the performance of the contract.

25           (b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

26           (1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The  
27           total amount determined under subsection (a) to be due any employee  
28           engaged in the performance of a contract may be withheld from ac-  
29           crued payments due on the contract or on any other contract between  
30           the same contractor and the Federal Government. The amount with-  
31           held shall be held in a deposit fund. On order of the Secretary of  
32           Labor, the compensation found by the Secretary or the head of a Fed-  
33           eral agency to be due an underpaid employee pursuant to this chapter  
34           shall be paid from the deposit fund directly to the underpaid employee.

35           (2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued pay-  
36           ments withheld under the terms of the contract are insufficient to reim-  
37           burse a service employee with respect to whom there has been a failure  
38           to pay the compensation required pursuant to this chapter, the Govern-  
39           ment may bring action against the contractor, subcontractor, or any  
40           sureties in any court of competent jurisdiction to recover the remaining  
41           amount of underpayment. Any amount recovered shall be held in the

1 deposit fund and shall be paid, on order of the Secretary, directly to  
 2 the underpaid employee. Any amount not paid to an employee because  
 3 of inability to do so within three years shall be covered into the Treas-  
 4 ury as miscellaneous receipts.

5 (e) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to  
 6 other actions in accordance with this section, when a violation of any con-  
 7 tract stipulation is found, the Federal agency that made the contract may  
 8 cancel the contract on written notice to the original contractor. The Govern-  
 9 ment may then make other contracts or arrangements for the completion  
 10 of the original contract, charging any additional cost to the original con-  
 11 tractor.

12 (d) ENFORCEMENT OF SECTION.—In accordance with regulations pre-  
 13 scribed pursuant to section 6707(a)–(d) of this title, the Secretary or the  
 14 head of a Federal agency may carry out this section.

15 **§ 6706. Three-year prohibition on new contracts in case of**  
 16 **violation**

17 (a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to  
 18 each agency of the Federal Government a list containing the names of per-  
 19 sons or firms that a Federal agency or the Secretary of Labor has found  
 20 to have violated this chapter.

21 (b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends oth-  
 22 erwise because of unusual circumstances, a Government contract may not  
 23 be awarded to a person or firm named on the list under subsection (a) of  
 24 this section, or to an entity in which the person or firm has a substantial  
 25 interest, until three years have elapsed from the date of publication of the  
 26 list. If the Secretary does not recommend otherwise because of unusual cir-  
 27 cumstances, the Secretary shall, not later than 90 days after a hearing ex-  
 28 aminer has made a finding of a violation of this chapter, forward to the  
 29 Comptroller General the name of the person or firm found to have violated  
 30 this chapter.

31 **§ 6707. Enforcement and administration of chapter**

32 (a) ENFORCEMENT OF CHAPTER.—Sections 6507 and 6508 of this title  
 33 govern the Secretary of Labor’s authority to enforce this chapter, including  
 34 the Secretary’s authority to make regulations, issue orders, hold hearings,  
 35 make decisions based on findings of fact, and take other appropriate action  
 36 under this chapter.

37 (b) LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES,  
 38 AND EXEMPTIONS.—The Secretary may provide reasonable limitations and  
 39 may prescribe regulations allowing reasonable variation, tolerances, and ex-  
 40 emptions with respect to this chapter (other than subsection (f) of this sec-  
 41 tion), but only in special circumstances where the Secretary determines that

1 the limitation, variation, tolerance, or exemption is necessary and proper in  
 2 the public interest or to avoid the serious impairment of Government busi-  
 3 ness, and is in accord with the remedial purpose of this chapter to protect  
 4 prevailing labor standards.

5 (c) PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDE-  
 6 CESSOR CONTRACTS.—

7 (1) IN GENERAL.—Under a contract which succeeds a contract sub-  
 8 ject to this chapter, and under which substantially the same services  
 9 are furnished, a contractor or subcontractor may not pay a service em-  
 10 ployee less than the wages and fringe benefits the service employee  
 11 would have received under the predecessor contract, including accrued  
 12 wages and fringe benefits and any prospective increases in wages and  
 13 fringe benefits provided for in a collective-bargaining agreement as a  
 14 result of arm's-length negotiations.

15 (2) EXCEPTION.—This subsection does not apply if the Secretary  
 16 finds after a hearing in accordance with regulations adopted by the  
 17 Secretary that wages and fringe benefits under the predecessor con-  
 18 tract are substantially at variance with wages and fringe benefits pre-  
 19 vailing in the same locality for services of a similar character.

20 (d) DURATION OF CONTRACTS.—Subject to limitations in annual appro-  
 21 priation acts but notwithstanding any other law, a contract to which this  
 22 chapter applies may, if authorized by the Secretary, be for any term of  
 23 years not exceeding five, if the contract provides for periodic adjustment of  
 24 wages and fringe benefits pursuant to future determinations, issued in the  
 25 manner prescribed in section 6703 of this title at least once every two years  
 26 during the term of the contract, covering each class of service employee.

27 (e) EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVER-  
 28 TIME PAY.—In determining any overtime pay to which a service employee  
 29 is entitled under Federal law, the regular or basic hourly rate of pay of the  
 30 service employee does not include any fringe benefit payments computed  
 31 under this chapter which are excluded from the definition of “regular rate”  
 32 under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C.  
 33 207(e)).

34 (f) TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.—It  
 35 is the intent of Congress that determinations of minimum wages and fringe  
 36 benefits under section 6703(1) and (2) of this title should be made as soon  
 37 as administratively feasible for all contracts subject to this chapter. In any  
 38 event, the Secretary shall at least make the determinations for contracts  
 39 under which more than five service employees are to be employed.

#### 40 **CHAPTER 69—CONTRACT DISPUTES**

Sec.  
 6901. Definitions.

- 6902. Applicability of chapter.
- 6903. Decision by contracting officer.
- 6904. Contractor's right of appeal from decision by contracting officer.
- 6905. Agency boards.
- 6906. Agency board procedures for accelerated and small claims.
- 6907. Judicial review of agency board decisions.
- 6908. Payment of claims.
- 6909. Interest.

1     **§ 6901. Definitions**

2         In this chapter—

3             (1) ADMINISTRATOR.—The term “Administrator” means the Admin-  
4             istrator for Federal Procurement Policy appointed pursuant to chapter  
5             11 of this title.

6             (2) AGENCY BOARD.—The term “agency board” means an agency  
7             board of contract appeals established under section 6905 of this title.

8             (3) AGENCY HEAD.—The term “agency head” means the head and  
9             any assistant head of an executive agency. The term may include the  
10            chief official of a principal division of an executive agency if the head  
11            of the executive agency so designates that chief official.

12            (4) CONTRACTING OFFICER.—The term “contracting officer”—

13                 (A) means an individual who, by appointment in accordance  
14                 with applicable regulations, has the authority to make and admin-  
15                 ister contracts and to make determinations and findings with re-  
16                 spect to contracts; and

17                 (B) includes an authorized representative of the contracting of-  
18                 ficer, acting within the limits of the representative's authority.

19             (5) CONTRACTOR.—The term “contractor” means a party to a Fed-  
20             eral Government contract other than the Government.

21             (6) EXECUTIVE AGENCY.—The term “executive agency” means—

22                 (A) an executive department as defined in section 101 of title  
23                 5;

24                 (B) a military department as defined in section 102 of title 5;

25                 (C) an independent establishment as defined in section 104 of  
26                 title 5, except that the term does not include the General Account-  
27                 ing Office;

28                 (D) a wholly owned Government corporation as defined in sec-  
29                 tion 9101(3) of title 31;

30                 (E) the United States Postal Service; or

31                 (F) the Postal Rate Commission.

32             (7) MISREPRESENTATION OF FACT.—The term “misrepresentation  
33             of fact” means a false statement of substantive fact, or conduct that  
34             leads to a belief of a substantive fact material to proper understanding  
35             of the matter in hand, made with intent to deceive or mislead.

1 **§ 6902. Applicability of chapter**

2 (a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically pro-  
3 vided in this chapter, this chapter applies to any express or implied contract  
4 (including those of the nonappropriated fund activities described in sections  
5 1346 and 1491 of title 28) made by an executive agency for—

6 (1) the procurement of property, other than real property;

7 (2) the procurement of services;

8 (3) the procurement of construction, alteration, repair, or mainte-  
9 nance of real property; or

10 (4) the disposal of personal property.

11 (b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

12 (1) IN GENERAL.—With respect to contracts of the Tennessee Valley  
13 Authority, this chapter applies only to contracts containing a clause  
14 that requires contract disputes to be resolved through an agency ad-  
15 ministrative process.

16 (2) EXCLUSION.—Notwithstanding any other provision of this chap-  
17 ter, this chapter does not apply to a contract of the Tennessee Valley  
18 Authority for the sale of fertilizer or electric power or related to the  
19 conduct or operation of the electric power system.

20 (c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CON-  
21 TRACTS.—If an agency head determines that applying this chapter would  
22 not be in the public interest, this chapter does not apply to a contract with  
23 a foreign government, an agency of a foreign government, an international  
24 organization, or a subsidiary body of an international organization.

25 (d) MARITIME CONTRACTS.—Appeals under section 6907(a) of this title  
26 and actions brought under sections 6904(b) and 6907(b)–(f) of this title,  
27 arising out of maritime contracts, are governed by the Act of March 9, 1920  
28 (known as the Suits in Admiralty Act) (46 App. U.S.C. 741 et seq.) or the  
29 Act of March 3, 1925 (known as the Public Vessels Act) (46 App. U.S.C.  
30 781 et seq.), as applicable, to the extent that those Acts are not inconsistent  
31 with this chapter.

32 **§ 6903. Decision by contracting officer**

33 (a) APPLICABILITY.—

34 (1) IN GENERAL.—This section applies to claims relating to a con-  
35 tract between the Federal Government and a contractor.

36 (2) LIMITATION REGARDING CERTAIN PENALTIES AND FORFEIT-  
37 URES.—The authority of this section does not extend to a claim or dis-  
38 pute for penalties or forfeitures prescribed by statute or regulation that  
39 another Federal agency is specifically authorized to administer, settle,  
40 or determine.

41 (b) CLAIMS GENERALLY.—

1 (1) SUBMISSION OF CLAIMS TO CONTRACTING OFFICER.—Each claim  
2 by a contractor against the Government and each claim by the Govern-  
3 ment against a contractor shall be submitted to the contracting officer  
4 for a decision.

5 (2) CONTRACTOR'S CLAIMS IN WRITING.—Each claim by a contractor  
6 against the Government shall be in writing.

7 (3) TIME FOR SUBMITTING CLAIMS.—

8 (A) IN GENERAL.—Each claim by a contractor against the Gov-  
9 ernment and each claim by the Government against a contractor  
10 shall be submitted within six years after the accrual of the claim.

11 (B) EXCEPTION.—This paragraph does not apply to a claim by  
12 the Government against a contractor that is based on a claim by  
13 the contractor involving fraud.

14 (c) CERTIFICATION OF CLAIMS.—

15 (1) REQUIREMENT GENERALLY.—For claims of more than  
16 \$100,000, the contractor shall certify that—

17 (A) the claim is made in good faith;

18 (B) the supporting data are accurate and complete to the best  
19 of the contractor's knowledge and belief;

20 (C) the amount requested accurately reflects the contract ad-  
21 justment for which the contractor believes the Government is lia-  
22 ble; and

23 (D) the certifier is authorized to certify the claim on behalf of  
24 the contractor.

25 (2) WHO MAY EXECUTE CERTIFICATION.—The certification required  
26 by paragraph (1) may be executed by an individual authorized to bind  
27 the contractor with respect to the claim.

28 (3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—A con-  
29 tracting officer is not obligated to render a final decision on a claim  
30 of more than \$100,000 that is not certified in accordance with para-  
31 graph (1) if, within 60 days after receipt of the claim, the contracting  
32 officer notifies the contractor in writing of the reasons why any at-  
33 tempted certification was found to be defective. A defect in the certifi-  
34 cation of a claim does not deprive a court or an agency board of juris-  
35 diction over the claim. Prior to the entry of a final judgment by a court  
36 or a decision by an agency board, the court or agency board shall re-  
37 quire a defective certification to be corrected.

38 (d) FRAUDULENT CLAIMS.—

39 (1) NO AUTHORITY TO SETTLE.—This section does not authorize an  
40 agency head to settle, compromise, pay, or otherwise adjust any claim  
41 involving fraud.

1           (2) LIABILITY OF CONTRACTOR.—If a contractor is unable to sup-  
2           port any part of the contractor’s claim and it is determined that the  
3           inability is attributable to a misrepresentation of fact or fraud by the  
4           contractor, then the contractor is liable to the Government for an  
5           amount equal to the unsupported part of the claim plus all of the Gov-  
6           ernment’s costs attributable to reviewing the unsupported part of the  
7           claim. Liability under this paragraph shall be determined within six  
8           years of the commission of the misrepresentation of fact or fraud.

9           (e) ISSUANCE OF DECISION.—The contracting officer shall issue a deci-  
10          sion in writing and shall mail or otherwise furnish a copy of the decision  
11          to the contractor.

12          (f) CONTENTS OF DECISION.—The contracting officer’s decision shall  
13          state the reasons for the decision reached and shall inform the contractor  
14          of the contractor’s rights as provided in this chapter. Specific findings of  
15          fact are not required. If made, specific findings of fact are not binding in  
16          any subsequent proceeding.

17          (g) TIME FOR ISSUANCE OF DECISION.—

18           (1) CLAIM OF \$100,000 OR LESS.—A contracting officer shall issue a  
19           decision on any submitted claim of \$100,000 or less within 60 days  
20           from the contracting officer’s receipt of a written request from the con-  
21           tractor that a decision be rendered within that period.

22           (2) CLAIM OF MORE THAN \$100,000.—A contracting officer shall,  
23           within 60 days of receipt of a submitted certified claim over  
24           \$100,000—

25                   (A) issue a decision; or

26                   (B) notify the contractor of the time within which a decision will  
27                   be issued.

28           (3) GENERAL REQUIREMENT OF REASONABLENESS.—The decision of  
29           a contracting officer on submitted claims shall be issued within a rea-  
30           sonable time, in accordance with regulations prescribed by the agency,  
31           taking into account factors including the size and complexity of the  
32           claim and the adequacy of information in support of the claim provided  
33           by the contractor.

34           (4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED  
35           TIME PERIOD.—A contractor may request a tribunal concerned to di-  
36           rect a contracting officer to issue a decision in a specified period of  
37           time, as determined by the tribunal concerned, in the event of undue  
38           delay on the part of the contracting officer.

39           (5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.—  
40           If a contracting officer fails to issue a decision on a claim within the  
41           required time period, the claim is deemed to be denied and an appeal

1 or action on the claim may be initiated as otherwise provided in this  
 2 chapter. However, a tribunal concerned may, at its option, stay the  
 3 proceedings of the appeal or action to obtain a decision by the con-  
 4 tracting officer.

5 (h) FINALITY OF DECISION UNLESS APPEALED.—The contracting offi-  
 6 cer’s decision on a claim is final and conclusive and is not subject to review  
 7 by any forum, tribunal, or Government agency, unless an appeal or action  
 8 is timely commenced as authorized by this chapter. This chapter does not  
 9 prohibit an executive agency from including a clause in a Government con-  
 10 tract requiring that, pending final decision of an appeal, action, or final set-  
 11 tlement, a contractor shall proceed diligently with performance of the con-  
 12 tract in accordance with the contracting officer’s decision.

13 (i) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—

14 (1) IN GENERAL.—Notwithstanding any other provision of this chap-  
 15 ter, a contractor and a contracting officer may use any alternative  
 16 means of dispute resolution under subchapter IV of chapter 5 of title  
 17 5, or other mutually agreeable procedures, for resolving claims. All pro-  
 18 visions of subchapter IV of chapter 5 of title 5 apply to alternative  
 19 means of dispute resolution under this subsection.

20 (2) CERTIFICATION OF CLAIM.—The contractor shall certify the  
 21 claim when required to do so under subsection (c)(1) or other law.

22 (3) REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLU-  
 23 TION.—

24 (A) CONTRACTING OFFICER.—A contracting officer who rejects  
 25 a contractor’s request for alternative dispute resolution pro-  
 26 ceedings shall provide the contractor with a written explanation,  
 27 citing one or more of the conditions in section 572(b) of title 5  
 28 or other specific reasons that alternative dispute resolution proce-  
 29 dures are inappropriate.

30 (B) CONTRACTOR.—A contractor that rejects an agency’s re-  
 31 quest for alternative dispute resolution proceedings shall inform  
 32 the agency in writing of the contractor’s specific reasons for re-  
 33 jecting the request.

34 **§ 6904. Contractor’s right of appeal from decision by con-**  
 35 **tracting officer**

36 (a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the  
 37 date of receipt of a contracting officer’s decision under section 6903 of this  
 38 title, may appeal the decision to an agency board as provided in section  
 39 6905 of this title.

40 (b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

1 (1) IN GENERAL.—Except as provided in paragraph (2), and in lieu  
 2 of appealing the decision of a contracting officer under section 6903  
 3 of this title to an agency board, a contractor may bring an action di-  
 4 rectly on the claim in the United States Court of Federal Claims, not-  
 5 withstanding any contract provision, regulation, or rule of law to the  
 6 contrary.

7 (2) TENNESSEE VALLEY AUTHORITY.—In the case of an action  
 8 against the Tennessee Valley Authority, the contractor may only bring  
 9 an action directly on the claim in a district court of the United States  
 10 pursuant to section 1337 of title 28, notwithstanding any contract pro-  
 11 vision, regulation, or rule of law to the contrary.

12 (3) TIME FOR FILING.—A contractor shall file any action under  
 13 paragraph (1) or (2) within 12 months from the date of receipt of a  
 14 contracting officer’s decision under section 6903 of this title.

15 (4) DE NOVO.—An action under paragraph (1) or (2) shall proceed  
 16 de novo in accordance with the rules of the appropriate court.

17 **§ 6905. Agency boards**

18 (a) ESTABLISHMENT.—

19 (1) IN GENERAL.—Except as provided in paragraph (2), an agency  
 20 board of contract appeals may be established within an executive agen-  
 21 cy when the agency head, after consultation with the Administrator, de-  
 22 termines from a workload study that the volume of contract claims jus-  
 23 tifies the establishment of a full-time agency board of at least three  
 24 members who shall have no other inconsistent duties. Workload studies  
 25 will be updated at least once every three years and submitted to the  
 26 Administrator.

27 (2) TENNESSEE VALLEY AUTHORITY.—The Board of Directors of  
 28 the Tennessee Valley Authority may establish an agency board of con-  
 29 tract appeals for the Authority of an indeterminate number of mem-  
 30 bers.

31 (3) GUIDELINES.—The Administrator, pursuant to the authority  
 32 conferred under part B of subtitle I of this title and as necessary or  
 33 desirable to carry out this chapter, shall issue guidelines with respect  
 34 to the establishment, functions, and procedures of agency boards, ex-  
 35 cept for the agency board established by the Tennessee Valley Author-  
 36 ity.

37 (b) APPOINTMENT OF MEMBERS AND COMPENSATION.—

38 (1) IN GENERAL.—Except as provided in paragraph (2), members of  
 39 an agency board are selected and appointed in the same way that ad-  
 40 ministrative law judges are appointed pursuant to section 3105 of title  
 41 5, with an additional requirement that members of an agency board

1 must have had at least five years of experience in public contract law.  
2 A chairman and vice chairman of each agency board shall be des-  
3 ignated by the agency head from among the appointed members. Com-  
4 pensation for the chairman, vice chairman, and other members is deter-  
5 mined under section 5372a of title 5.

6 (2) TENNESSEE VALLEY AUTHORITY.—The Board of Directors of  
7 the Tennessee Valley Authority shall establish criteria for the appoint-  
8 ment of members to the agency board established under subsection  
9 (a)(2), and shall designate a chairman of the agency board. The chair-  
10 man and other members of the agency board shall receive compensa-  
11 tion, at the daily equivalent of the rates determined under section  
12 5372a of title 5, for each day they are engaged in the actual perform-  
13 ance of their duties as members of the agency board.

14 (c) INTER-AGENCY ARRANGEMENTS.—If the volume of contract claims is  
15 not sufficient to justify an agency board under subsection (a), or if an agen-  
16 cy head otherwise considers it appropriate, the agency head shall arrange  
17 for appeals from decisions by contracting officers of the agency to be de-  
18 cided by the agency board of another executive agency. If an agency head  
19 is unable to make such an arrangement, the agency head shall submit any  
20 appeals to the Administrator for placement with an agency board. This sub-  
21 section does not apply to the Tennessee Valley Authority.

22 (d) JURISDICTION.—

23 (1) IN GENERAL.—Each agency board has jurisdiction to decide any  
24 appeal from the decision of a contracting officer, relative to a contract  
25 made by—

26 (A) the agency board's own agency; or

27 (B) another agency, if the other agency or the Administrator  
28 designates the agency board to decide the appeal pursuant to sub-  
29 section (c).

30 (2) RELIEF.—In exercising jurisdiction, an agency board may grant  
31 any relief that would be available to a litigant asserting a contract  
32 claim in the United States Court of Federal Claims.

33 (e) SUBPENA, DISCOVERY, AND DEPOSITION.—A member of an agency  
34 board may administer oaths to witnesses, authorize depositions and dis-  
35 covery proceedings, and require by subpoena the attendance of witnesses, and  
36 production of books and papers, for the taking of testimony or evidence by  
37 deposition or in the hearing of an appeal by the agency board. In case of  
38 contumacy or refusal to obey a subpoena by a person who resides, is found,  
39 or transacts business within the jurisdiction of a United States district  
40 court, the court, upon application of the agency board through the Attorney  
41 General; or upon application by the agency board of the Tennessee Valley

1 Authority, shall have jurisdiction to issue the person an order requiring the  
 2 person to appear before the agency board or a member of the agency board,  
 3 to produce evidence or to give testimony, or both. Any failure of the person  
 4 to obey the order of the court may be punished by the court as contempt  
 5 of court.

6 (f) DECISIONS.—An agency board shall—

7 (1) to the fullest extent practicable provide informal, expeditious, and  
 8 inexpensive resolution of disputes;

9 (2) issue a decision in writing or take other appropriate action on  
 10 each appeal submitted; and

11 (3) mail or otherwise furnish a copy of the decision to the contractor  
 12 and the contracting officer.

13 **§ 6906. Agency board procedures for accelerated and small**  
 14 **claims**

15 (a) ACCELERATED PROCEDURE WHERE \$100,000 OR LESS IN DIS-  
 16 PUTATE.—The rules of each agency board shall include a procedure for the  
 17 accelerated disposition of any appeal from a decision of a contracting officer  
 18 where the amount in dispute is \$100,000 or less. The accelerated procedure  
 19 is applicable at the sole election of the contractor. An appeal under the ac-  
 20 celerated procedure shall be resolved, whenever possible, within 180 days  
 21 from the date the contractor elects to use the procedure.

22 (b) SMALL CLAIMS PROCEDURE WHERE \$50,000 OR LESS IN DIS-  
 23 PUTATE.—

24 (1) IN GENERAL.—The rules of each agency board shall include a  
 25 procedure for the expedited disposition of any appeal from a decision  
 26 of a contracting officer where the amount in dispute is \$50,000 or less.  
 27 The small claims procedure is applicable at the sole election of the con-  
 28 tractor.

29 (2) SIMPLIFIED RULES OF PROCEDURE.—The small claims proce-  
 30 dure shall provide for simplified rules of procedure to facilitate decision  
 31 making. An appeal under the small claims procedure may be decided  
 32 by a single member of the agency board with concurrences as may be  
 33 provided by rule or regulation.

34 (3) TIME OF DECISION.—An appeal under the small claims proce-  
 35 dure shall be resolved, whenever possible, within 120 days from the  
 36 date the contractor elects to use the procedure.

37 (4) FINALITY OF DECISION.—A decision against the Federal Govern-  
 38 ment or against the contractor reached under the small claims proce-  
 39 dure is final and conclusive and may not be set aside except in cases  
 40 of fraud.

1 (5) NO PRECEDENT.—Administrative determinations and final deci-  
 2 sions under this subsection have no value as precedent for future cases  
 3 under this chapter.

4 (6) REVIEW OF REQUISITE AMOUNT IN CONTROVERSY.—The Admin-  
 5 istrator, from time to time, may review the dollar amount specified in  
 6 paragraph (1) and adjust the amount in accordance with economic in-  
 7 dexes selected by the Administrator.

8 **§ 6907. Judicial review of agency board decisions**

9 (a) REVIEW.—

10 (1) IN GENERAL.—The decision of an agency board is final, except  
 11 that—

12 (A) a contractor may appeal the decision to the United States  
 13 Court of Appeals for the Federal Circuit within 120 days from the  
 14 date the contractor receives a copy of the decision; or

15 (B) if an agency head determines that an appeal should be  
 16 taken, the agency head, with the prior approval of the Attorney  
 17 General, may transmit the decision to the Court of Appeals for the  
 18 Federal Circuit for judicial review under section 1295 of title 28,  
 19 within 120 days from the date the agency receives a copy of the  
 20 decision.

21 (2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph  
 22 (1), a decision of the agency board of the Tennessee Valley Authority  
 23 is final, except that—

24 (A) a contractor may appeal the decision to a United States dis-  
 25 trict court pursuant to section 1337 of title 28, within 120 days  
 26 from the date the contractor receives a copy of the decision; or

27 (B) the Tennessee Valley Authority may appeal the decision to  
 28 a United States district court pursuant to section 1337 of title 28,  
 29 within 120 days from the date of the decision.

30 (3) REVIEW OF ARBITRATION.—An award by an arbitrator under  
 31 this chapter shall be reviewed pursuant to sections 9 through 13 of title  
 32 9, except that the court may set aside or limit any award that is found  
 33 to violate limitations imposed by Federal statute.

34 (b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW  
 35 AND FACT.—Notwithstanding any contract provision, regulation, or rule of  
 36 law to the contrary, in an appeal by a contractor or the Federal Government  
 37 from the decision of an agency board pursuant to section 6905(f) of this  
 38 title—

39 (1) the decision of the agency board on a question of law is not final  
 40 or conclusive; but

1           (2) the decision of the agency board on a question of fact is final  
2           and conclusive and may not be set aside unless the decision is—

3                   (A) fraudulent, arbitrary, or capricious;

4                   (B) so grossly erroneous as to necessarily imply bad faith; or

5                   (C) not supported by substantial evidence.

6           (c) REMAND.—In an appeal by a contractor or the Government from the  
7           decision of an agency board pursuant to section 6905(f) of this title, the  
8           court may render an opinion and judgment and remand the case for further  
9           action by the agency board or by the executive agency as appropriate, with  
10          direction the court considers just and proper.

11          (d) CONSOLIDATION.—If two or more actions arising from one contract  
12          are filed in the United States Court of Federal Claims and one or more  
13          agency boards, for the convenience of parties or witnesses or in the interest  
14          of justice, the United States Court of Federal Claims may order the consoli-  
15          dation of the actions in that court or transfer any actions to or among the  
16          agency boards involved.

17          (e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an  
18          action filed pursuant to this chapter involving two or more claims, counter-  
19          claims, cross-claims, or third-party claims, and where a portion of one of  
20          the claims can be divided for purposes of decision or judgment, and in any  
21          actions where multiple parties are involved, the court, whenever appropriate,  
22          may enter a judgment as to one or more but fewer than all of the claims  
23          or portions of claims or parties.

24          (f) ADVISORY OPINIONS.—

25               (1) IN GENERAL.—Whenever an action involving an issue described  
26               in paragraph (2) is pending in a district court of the United States,  
27               the district court may request an agency board to provide the court  
28               with an advisory opinion on the matters of contract interpretation  
29               under consideration.

30               (2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is  
31               any issue that could be the proper subject of a final decision of a con-  
32               tracting officer appealable under this chapter.

33               (3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district  
34               court shall direct a request under paragraph (1) to the agency board  
35               having jurisdiction under this chapter to adjudicate appeals of contract  
36               claims under the contract being interpreted by the court.

37               (4) TIMELY RESPONSE.—After receiving a request for an advisory  
38               opinion under paragraph (1), an agency board shall provide the advi-  
39               sory opinion in a timely manner to the district court making the re-  
40               quest.

1 **§ 6908. Payment of claims**

2 (a) JUDGMENTS.—Any judgment against the United States on a claim  
3 under this chapter shall be paid promptly in accordance with the procedures  
4 provided by section 1304 of title 31.

5 (b) MONETARY AWARDS.—Any monetary award to a contractor by an  
6 agency board shall be paid promptly in accordance with the procedures con-  
7 tained in subsection (a).

8 (c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and  
9 (b) shall be reimbursed to the fund provided by section 1304 of title 31 by  
10 the agency whose appropriations were used for the contract out of available  
11 funds or by obtaining additional appropriations for purposes of reimburse-  
12 ment.

13 (d) TENNESSEE VALLEY AUTHORITY.—

14 (1) JUDGMENTS.—Notwithstanding subsections (a) through (c), any  
15 judgment against the Tennessee Valley Authority on a claim under this  
16 chapter shall be paid promptly in accordance with section 9(b) of the  
17 Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

18 (2) MONETARY AWARDS.—Notwithstanding subsections (a) through  
19 (c), any monetary award to a contractor by the agency board of the  
20 Tennessee Valley Authority shall be paid in accordance with section  
21 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C.  
22 831h(b)).

23 **§ 6909. Interest**

24 (a) PERIOD.—

25 (1) IN GENERAL.—Interest on an amount found due a contractor on  
26 a claim shall be paid to the contractor for the period beginning with  
27 the date the contracting officer receives the contractor's claim, pursu-  
28 ant to section 6903(b)(3) of this title, until the date of payment of the  
29 claim.

30 (2) DEFECTIVE CERTIFICATION.—On a claim for which the certifi-  
31 cation under section 6903(c)(1) of this title is found to be defective,  
32 any interest due under this section shall be paid for the period begin-  
33 ning with the date the contracting officer initially receives the contrac-  
34 tor's claim until the date of payment of the claim.

35 (b) RATE.—Interest shall accrue and be paid at a rate which the Sec-  
36 retary of the Treasury shall specify as applicable for each successive six-  
37 month period. The rate shall be determined by the Secretary taking into  
38 consideration current private commercial rates of interest for new loans ma-  
39 turing in approximately five years.

40 **Subtitle III—Miscellaneous**

Chapter	Sec.
<b>81. Drug-Free Workplace</b> .....	<b>8101</b>

<b>83. Buy American .....</b>	<b>8301</b>
<b>85. Committee for Purchase From People Who Are Blind or Severely Disabled.</b>	<b>8501</b>
<b>87. Kickbacks .....</b>	<b>8701</b>

1

**CHAPTER 81—DRUG-FREE WORKPLACE**

Sec.

- 8101. Definitions and construction.
- 8102. Drug-free workplace requirements for Federal contractors.
- 8103. Drug-free workplace requirements for Federal grant recipients.
- 8104. Employee sanctions and remedies.
- 8105. Waiver.
- 8106. Regulations.

2

**§ 8101. Definitions and construction**

3

(a) DEFINITIONS.—In this chapter—

4

(1) CONTRACTOR.—The term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract.

7

(2) CONTROLLED SUBSTANCE.—The term “controlled substance” means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

11

(3) CONVICTION.—The term “conviction” means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

15

(4) CRIMINAL DRUG STATUTE.—The term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

18

(5) DRUG-FREE WORKPLACE.—The term “drug-free workplace” means a site of an entity—

20

(A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and

23

(B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4181).

28

(6) EMPLOYEE.—The term “employee” means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section 8102 or 8103 of this title.

32

(7) FEDERAL AGENCY.—The term “Federal agency” means an agency as defined in section 552(f) of title 5.

33

1 (8) GRANTEE.—The term “grantee” means the department, division,  
2 or other unit of a person responsible for the performance under the  
3 grant.

4 (b) CONSTRUCTION.—This chapter does not require law enforcement  
5 agencies to comply with this chapter if the head of the agency determines  
6 it would be inappropriate in connection with the agency’s undercover oper-  
7 ations.

8 **§ 8102. Drug-free workplace requirements for Federal con-**  
9 **tractors**

10 (a) IN GENERAL.—

11 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an  
12 individual shall not be considered a responsible source (as defined in  
13 section 112 of this title) for the purposes of being awarded a contract  
14 for the procurement of any property or services of a value greater than  
15 the simplified acquisition threshold (as defined in section 133 of this  
16 title) by a Federal agency, other than a contract for the procurement  
17 of commercial items (as defined in section 103 of this title), unless the  
18 person agrees to provide a drug-free workplace by—

19 (A) publishing a statement notifying employees that the unlaw-  
20 ful manufacture, distribution, dispensation, possession, or use of  
21 a controlled substance is prohibited in the person’s workplace and  
22 specifying the actions that will be taken against employees for vio-  
23 lations of the prohibition;

24 (B) establishing a drug-free awareness program to inform em-  
25 ployees about—

26 (i) the dangers of drug abuse in the workplace;

27 (ii) the person’s policy of maintaining a drug-free work-  
28 place;

29 (iii) available drug counseling, rehabilitation, and employee  
30 assistance programs; and

31 (iv) the penalties that may be imposed on employees for  
32 drug abuse violations;

33 (C) making it a requirement that each employee to be engaged  
34 in the performance of the contract be given a copy of the state-  
35 ment required by subparagraph (A);

36 (D) notifying the employee in the statement required by sub-  
37 paragraph (A) that as a condition of employment on the contract  
38 the employee will—

39 (i) abide by the terms of the statement; and

1 (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than  
2 five days after the conviction;

3 (E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

4 (F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

5 (G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A)–(F).

6 (2) INDIVIDUALS.—A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

7 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

8 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—

9 Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—

10 (A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

11 (B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

12 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other proce-

1           dures as may be necessary to provide a full and fair proceeding to a  
2           contractor or individual.

3           (3) EFFECT OF DEBARMENT.—A contractor or individual debarred  
4           under this subsection is ineligible for award of a contract by a Federal  
5           agency, and shall not participate in a future procurement by a Federal  
6           agency, for a period specified in the final decision issued under this  
7           subsection, not to exceed five years.

8           **§ 8103. Drug-free workplace requirements for Federal grant**  
9           **recipients**

10          (a) IN GENERAL.—

11           (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an  
12           individual shall not receive a grant from a Federal agency unless the  
13           person agrees to provide a drug-free workplace by—

14           (A) publishing a statement notifying employees that the unlaw-  
15           ful manufacture, distribution, dispensation, possession, or use of  
16           a controlled substance is prohibited in the grantee’s workplace and  
17           specifying the actions that will be taken against employees for vio-  
18           lations of the prohibition;

19           (B) establishing a drug-free awareness program to inform em-  
20           ployees about—

21           (i) the dangers of drug abuse in the workplace;

22           (ii) the grantee’s policy of maintaining a drug-free work-  
23           place;

24           (iii) available drug counseling, rehabilitation, and employee  
25           assistance programs; and

26           (iv) the penalties that may be imposed on employees for  
27           drug abuse violations;

28           (C) making it a requirement that each employee to be engaged  
29           in the performance of the grant be given a copy of the statement  
30           required by subparagraph (A);

31           (D) notifying the employee in the statement required by sub-  
32           paragraph (A) that as a condition of employment in the grant the  
33           employee will—

34           (i) abide by the terms of the statement; and

35           (ii) notify the employer of any criminal drug statute convic-  
36           tion for a violation occurring in the workplace no later than  
37           five days after the conviction;

38           (E) notifying the granting agency within 10 days after receiving  
39           notice under subparagraph (D)(ii) from an employee or otherwise  
40           receiving actual notice of a conviction;

1 (F) imposing a sanction on, or requiring the satisfactory partici-  
 2 pation in a drug abuse assistance or rehabilitation program by,  
 3 any employee who is convicted, as required by section 8104 of this  
 4 title; and

5 (G) making a good faith effort to continue to maintain a drug-  
 6 free workplace through implementation of subparagraphs (A)–(F).

7 (2) INDIVIDUALS.—A Federal agency shall not make a grant to an  
 8 individual unless the individual agrees not to engage in the unlawful  
 9 manufacture, distribution, dispensation, possession, or use of a con-  
 10 trolled substance in conducting an activity with the grant.

11 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

12 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—

13 Payment under a grant awarded by a Federal agency may be sus-  
 14 pended and the grant may be terminated, and the grantee may be sus-  
 15 pended or debarred, in accordance with the requirements of this sec-  
 16 tion, if the head of the agency or the official designee of the head of  
 17 the agency determines in writing that—

18 (A) the grantee is violating, or has violated, the requirements  
 19 of subparagraph (A), (B), (C), (D), (E), or (F) of subsection  
 20 (a)(1); or

21 (B) the number of employees of the grantee who have been con-  
 22 victed of violations of criminal drug statutes for violations occur-  
 23 ring in the workplace indicates that the contractor has failed to  
 24 make a good faith effort to provide a drug-free workplace as re-  
 25 quired by subsection (a)(1).

26 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT  
 27 PROCEEDINGS.—A suspension of payments, termination, or suspension  
 28 or debarment proceeding subject to this subsection shall be conducted  
 29 in accordance with applicable law, including Executive Order 12549 or  
 30 any superseding Executive order and any regulations prescribed to im-  
 31 plement the law or Executive order.

32 (3) EFFECT OF DEBARMENT.—A grantee debarred under this sub-  
 33 section is ineligible for award of a grant by a Federal agency, and shall  
 34 not participate in a future grant by a Federal agency for a period spec-  
 35 ified in the final decision issued under this subsection, not to exceed  
 36 5 years.

37 **§ 8104. Employee sanctions and remedies**

38 Within 30 days after receiving notice from an employee of a conviction  
 39 pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a  
 40 contractor or grantee shall—

1 (1) take appropriate personnel action against the employee, up to  
2 and including termination; or

3 (2) require the employee to satisfactorily participate in a drug abuse  
4 assistance or rehabilitation program approved for those purposes by a  
5 Federal, State, or local health, law enforcement, or other appropriate  
6 agency.

7 **§ 8105. Waiver**

8 (a) IN GENERAL.—The head of an agency may waive a suspension of  
9 payments, termination of the contract or grant, or suspension or debarment  
10 under this chapter with respect to a particular contract or grant if—

11 (1) in the case of a contract, the head of the agency determines  
12 under section 8102(b)(1) of this title, after a final determination is  
13 issued under section 8102(b)(1), that suspension of payments, termi-  
14 nation of the contract, suspension or debarment of the contractor, or  
15 refusal to permit a person to be treated as a responsible source for a  
16 contract would severely disrupt the operation of the agency to the det-  
17 riment of the Federal Government or the general public; or

18 (2) in the case of a grant, the head of the agency determines that  
19 suspension of payments, termination of the grant, or suspension or de-  
20 barment of the grantee would not be in the public interest.

21 (b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of  
22 the head of an agency under this section to waive a suspension, termination,  
23 or debarment shall not be delegated.

24 **§ 8106. Regulations**

25 Governmentwide regulations governing actions under this chapter shall be  
26 issued pursuant to part B of subtitle I of this title.

27 **CHAPTER 83—BUY AMERICAN**

Sec.

- 8301. Definitions.
- 8302. American materials required for public use.
- 8303. Contracts for public works.
- 8304. Waiver rescission.
- 8305. Annual report.

28 **§ 8301. Definitions**

29 In this chapter—

30 (1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms  
31 “public building”, “public use”, and “public work” mean a public  
32 building of, use by, and a public work of, the Federal Government, the  
33 District of Columbia, Puerto Rico, American Samoa, and the Virgin Is-  
34 lands.

35 (2) UNITED STATES.—The term “United States” includes any place  
36 subject to the jurisdiction of the United States.

**§ 8302. American materials required for public use**

(a) IN GENERAL.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines the acquisition is inconsistent with the public interest or the cost to be unreasonable.

(b) EXCEPTIONS.—This section does not apply—

(1) to articles, materials, or supplies for use outside the United States;

(2) if the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(3) to manufactured articles, materials, or supplies procured under a contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

**§ 8303. Contracts for public works**

(a) IN GENERAL.—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—

(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and

(2) manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

(b) EXCEPTIONS.—

(1) IN GENERAL.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

1 (C) to manufactured articles, materials, or supplies procured  
2 under any contract with an award value that is not more than the  
3 micro-purchase threshold under section 1902 of this title.

4 (2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of  
5 the department or independent establishment making the contract finds  
6 that it is impracticable to comply with subsection (a) for a particular  
7 article, material, or supply or that it would unreasonably increase the  
8 cost, an exception shall be noted in the specifications for that article,  
9 material, or supply and a public record of the findings that justified  
10 the exception shall be made.

11 (c) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bu-  
12 reau, agency, or independent establishment that has made a contract con-  
13 taining the provision required by subsection (a) finds that there has been  
14 a failure to comply with the provision in the performance of the contract,  
15 the head of the department, bureau, agency, or independent establishment  
16 shall make the findings public. The findings shall include the name of the  
17 contractor obligated under the contract. The contractor, and any subcon-  
18 tractor, material man, or supplier associated or affiliated with the con-  
19 tractor, shall not be awarded another contract for the construction, alter-  
20 ation, or repair of any public building or public work for three years after  
21 the findings are made public.

22 **§ 8304. Waiver rescission**

23 (a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b)  
24 is a reciprocal defense procurement memorandum of understanding between  
25 the United States and a foreign country pursuant to which the Secretary  
26 of Defense has prospectively waived this chapter for certain products in that  
27 country.

28 (b) DETERMINATION BY SECRETARY.—If the Secretary, after consulta-  
29 tion with the United States Trade Representative, determines that a foreign  
30 country that is party to an agreement described in subsection (a) has vio-  
31 lated the agreement by discriminating against certain types of products pro-  
32 duced in the United States that are covered by the agreement, the Secretary  
33 shall rescind the Secretary's blanket waiver of this chapter with respect to  
34 those types of products produced in that country.

35 (c) REPORT.—The Secretary shall submit to Congress a report on the  
36 amount of Department of Defense purchases from foreign entities in fiscal  
37 year 2004. The report shall separately indicate the dollar value of items for  
38 which this chapter was waived pursuant to an agreement described in sub-  
39 section (a), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.),  
40 or an international agreement to which the United States is a party.

1 **§ 8305. Annual report**

2 Not later than 60 days after the end of each fiscal year, the Secretary  
3 of Defense shall submit to Congress a report on the amount of purchases  
4 by the Department of Defense from foreign entities in that fiscal year. The  
5 report shall separately indicate the dollar value of items for which this chap-  
6 ter was waived pursuant to—

7 (1) a reciprocal defense procurement memorandum of understanding  
8 described in section 849(c)(2) of the National Defense Authorization  
9 Act for Fiscal Year 1994 (Public Law 103–160, 107 Stat. 1725);

10 (2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

11 (3) an international agreement to which the United States is a party.

12 **CHAPTER 85—COMMITTEE FOR PURCHASE FROM**  
13 **PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

Sec.

8501. Definitions.

8502. Committee for Purchase From People Who Are Blind or Severely Disabled.

8503. Duties and powers of the Committee.

8504. Procurement requirements for the Federal Government.

8505. Audit.

8506. Authorization of appropriations.

14 **§ 8501. Definitions**

15 In this chapter—

16 (1) **BLIND.**—The term “blind” refers to an individual or class of in-  
17 dividuals whose central visual acuity does not exceed 20/200 in the bet-  
18 ter eye with correcting lenses or whose visual acuity, if better than 20/  
19 200, is accompanied by a limit to the field of vision in the better eye  
20 to such a degree that its widest diameter subtends an angle of no  
21 greater than 20 degrees.

22 (2) **DIRECT LABOR.**—The term “direct labor”—

23 (A) includes all work required for preparation, processing, and  
24 packing of a commodity, or work directly relating to the perform-  
25 ance of a service; but

26 (B) does not include supervision, administration, inspection, or  
27 shipping.

28 (3) **ENTITY OF THE FEDERAL GOVERNMENT, FEDERAL GOVERN-**  
29 **MENT, AND GOVERNMENT.**—The terms “entity of the Federal Govern-  
30 ment”, “Federal Government”, and “Government” include an entity of  
31 the legislative or judicial branch, a military department or executive  
32 agency (as defined in sections 102 and 105 of title 5), the United  
33 States Postal Service, and a nonappropriated fund instrumentality  
34 under the jurisdiction of the Armed Forces.

35 (4) **OTHER SEVERELY DISABLED.**—The term “other severely dis-  
36 abled” means an individual or class of individuals under a physical or  
37 mental disability, other than blindness, which (according to criteria es-

1           established by the Committee for Purchase From People Who Are Blind  
2           or Severely Disabled after consultation with appropriate entities of the  
3           Federal Government and taking into account the views of non-Govern-  
4           ment entities representing the disabled) constitutes a substantial handi-  
5           cap to employment and is of a nature that prevents the individual from  
6           currently engaging in normal competitive employment.

7           (5) **PROCUREMENT LIST.**—The term “procurement list” means a list  
8           of the commodities produced by any qualified nonprofit agency for the  
9           blind or by any qualified nonprofit agency for other severely disabled,  
10          and the services those agencies provide, that the Committee determines  
11          are suitable for the Government to procure pursuant to this chapter.

12          (6) **QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DIS-**  
13          **ABLED.**—The term “qualified nonprofit agency for other severely dis-  
14          abled” means an agency—

15                (A)(i) organized under the laws of the United States or a State;

16                (ii) operated in the interest of severely disabled individuals who  
17                are not blind; and

18                (iii) of which no part of the net income of the agency inures  
19                to the benefit of an individual;

20                (B) that complies with any applicable occupational health and  
21                safety standard prescribed by the Secretary of Labor; and

22                (C) that in the production of commodities and in the provision  
23                of services (whether or not the commodities or services are pro-  
24                cured under this chapter) during the fiscal year employs blind or  
25                other severely disabled individuals for at least 75 percent of the  
26                hours of direct labor required for the production or provision of  
27                the commodities or services.

28          (7) **QUALIFIED NONPROFIT AGENCY FOR THE BLIND.**—The term  
29          “qualified nonprofit agency for the blind” means an agency—

30                (A)(i) organized under the laws of the United States or a State;

31                (ii) operated in the interest of blind individuals; and

32                (iii) of which no part of the net income of the agency inures  
33                to the benefit of an individual;

34                (B) that complies with any applicable occupational health and  
35                safety standard prescribed by the Secretary; and

36                (C) that in the production of commodities and in the provision  
37                of services (whether or not the commodities or services are pro-  
38                cured under this chapter) during the fiscal year employs blind in-  
39                dividuals for at least 75 percent of the hours of direct labor re-  
40                quired for the production or provision of the commodities or serv-  
41                ices.

1 (8) SEVERELY DISABLED INDIVIDUAL.—The term “severely disabled  
 2 individual” means an individual or class of individuals under a physical  
 3 or mental disability, other than blindness, which (according to criteria  
 4 established by the Committee after consultation with appropriate enti-  
 5 ties of the Government and taking into account the views of non-Gov-  
 6 ernment entities representing the disabled) constitutes a substantial  
 7 handicap to employment and is of a nature that prevents the individual  
 8 from currently engaging in normal competitive employment.

9 (9) STATE.—The term “State” includes the District of Columbia,  
 10 Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern  
 11 Mariana Islands, the Marshall Islands, Palau, and the Federated  
 12 States of Micronesia.

13 **§ 8502. Committee for Purchase From People Who Are Blind**  
 14 **or Severely Disabled**

15 (a) ESTABLISHMENT.—There is a Committee for Purchase From People  
 16 Who Are Blind or Severely Disabled.

17 (b) COMPOSITION.—The Committee consists of 15 members appointed by  
 18 the President as follows:

19 (1) One officer or employee from each of the following, nominated  
 20 by the head of the department or agency:

21 (A) The Department of Agriculture.

22 (B) The Department of Defense.

23 (C) The Department of the Army.

24 (D) The Department of the Navy.

25 (E) The Department of the Air Force.

26 (F) The Department of Health and Human Services.

27 (G) The Department of Commerce.

28 (H) The Department of Veterans Affairs.

29 (I) The Department of Justice.

30 (J) The Department of Labor.

31 (K) The General Services Administration.

32 (2) One member from individuals who are not officers or employees  
 33 of the Federal Government and who are conversant with the problems  
 34 incident to the employment of the blind.

35 (3) One member from individuals who are not officers or employees  
 36 of the Government and who are conversant with the problems incident  
 37 to the employment of other severely disabled individuals.

38 (4) One member from individuals who are not officers or employees  
 39 of the Government and who represent blind individuals employed in  
 40 qualified nonprofit agencies for the blind.

1           (5) One member from individuals who are not officers or employees  
2           of the Government and who represent severely disabled individuals  
3           (other than blind individuals) employed in qualified nonprofit agencies  
4           for other severely disabled individuals.

5           (c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3),  
6           (4), or (5) of subsection (b) shall be appointed for terms of five years and  
7           may be reappointed if the member meets the qualifications prescribed by  
8           those paragraphs.

9           (d) CHAIRMAN.—The members of the Committee shall elect one of the  
10          members to be Chairman.

11          (e) VACANCY.—

12           (1) MANNER IN WHICH FILLED.—A vacancy in the membership of  
13           the Committee shall be filled in the manner in which the original ap-  
14           pointment was made.

15           (2) UNFULFILLED TERM.—A member appointed under paragraph  
16           (2), (3), (4) or (5) of subsection (b) to fill a vacancy occurring prior  
17           to the expiration of the term for which the predecessor was appointed  
18           shall be appointed only for the remainder of the term. The member  
19           may serve after the expiration of a term until a successor takes office.

20          (f) PAY AND TRAVEL EXPENSES.—

21           (1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as pro-  
22           vided in paragraph (2), members of the Committee are entitled to re-  
23           ceive the daily equivalent of the maximum annual rate of basic pay  
24           payable under section 5376 of title 5 for each day (including travel  
25           time) during which they perform services for the Committee. A member  
26           is entitled to travel expenses, including a per diem allowance, instead  
27           of subsistence, as provided under section 5703 of title 5.

28           (2) OFFICERS OR EMPLOYEES OF THE GOVERNMENT.—Members  
29           who are officers or employees of the Government may not receive addi-  
30           tional pay because of their service on the Committee.

31          (g) STAFF.—

32           (1) APPOINTMENT AND COMPENSATION.—Subject to rules that the  
33           Committee may adopt and to chapters 33 and 51 and subchapter III  
34           of chapter 53 of title 5, the Chairman may appoint and fix the pay  
35           of personnel the Committee determines are necessary to assist it in car-  
36           rying out this chapter.

37           (2) PERSONNEL FROM OTHER ENTITIES.—On request of the Com-  
38           mittee, the head of an entity of the Government may detail, on a reim-  
39           bursable basis, any personnel of the entity to the Committee to assist  
40           it in carrying out this chapter.

1 (h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure di-  
 2 rectly from an entity of the Government information necessary to enable it  
 3 to carry out this chapter. On request of the Chairman, the head of the enti-  
 4 ty shall furnish the information to the Committee.

5 (i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General  
 6 Services shall provide to the Committee on a reimbursable basis administra-  
 7 tive support services that the Committee requests.

8 (j) ANNUAL REPORT.—Not later than December 31 of each year, the  
 9 Committee shall transmit to the President a report that includes the names  
 10 of the Committee members serving in the prior fiscal year, the dates of  
 11 Committee meetings in that year, a description of the activities of the Com-  
 12 mittee under this chapter in that year, and any recommendations for  
 13 changes in this chapter which the Committee determines are necessary.

14 **§ 8503. Duties and powers of the Committee**

15 (a) PROCUREMENT LIST.—The Committee for Purchase From People  
 16 Who Are Blind or Severely Disabled shall maintain and publish in the Fed-  
 17 eral Register a procurement list. In accordance with the requirements of  
 18 section 553(b)–(e) of title 5, the Committee by rule may add to, and remove  
 19 from, the procurement list commodities produced and services provided.

20 (b) FAIR MARKET PRICE.—The Committee shall determine the fair mar-  
 21 ket price of commodities and services contained on the procurement list that  
 22 are offered for sale to the Government by a qualified nonprofit agency for  
 23 the blind or a qualified nonprofit agency for other severely disabled. The  
 24 Committee from time to time shall revise its price determinations with re-  
 25 spect to those commodities and services in accordance with changing market  
 26 conditions.

27 (c) CENTRAL NONPROFIT AGENCY.—The Committee shall designate a  
 28 central nonprofit agency to facilitate the distribution, by direct allocation,  
 29 subcontract, or any other means, of orders of the Government for commod-  
 30 ities and services on the procurement list among qualified nonprofit agencies  
 31 for the blind or qualified nonprofit agencies for other severely disabled.

32 (d) REGULATIONS.—The Committee—

33 (1) may prescribe regulations regarding specifications for commod-  
 34 ities and services on the procurement list, the time of their delivery,  
 35 and other matters as necessary to carry out this chapter; and

36 (2) shall prescribe regulations providing that when the Government  
 37 purchases commodities produced and offered for sale by qualified non-  
 38 profit agencies for the blind or qualified nonprofit agencies for other  
 39 severely disabled, priority shall be given to commodities produced and  
 40 offered for sale by qualified nonprofit agencies for the blind.

1 (e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall  
 2 make a continuing study and evaluation of its activities under this chapter  
 3 to ensure effective and efficient administration of this chapter. The Com-  
 4 mittee on its own or in cooperation with other public or nonprofit private  
 5 agencies may study—

6 (1) problems related to the employment of the blind and other se-  
 7 verely disabled individuals; and

8 (2) the development and adaptation of production methods that  
 9 would enable a greater utilization of the blind and other severely dis-  
 10 abled individuals.

11 **§ 8504. Procurement requirements for the Federal Govern-**  
 12 **ment**

13 (a) IN GENERAL.—An entity of the Federal Government intending to pro-  
 14 cure a commodity or service on the procurement list shall procure the com-  
 15 modity or service from a qualified nonprofit agency for the blind or a quali-  
 16 fied nonprofit agency for other severely disabled in accordance with regula-  
 17 tions of the Committee for Purchase From People Who Are Blind or Se-  
 18 verely Disabled and at the price the Committee establishes if the commodity  
 19 or service is available within the period required by the entity.

20 (b) EXCEPTION.—This section does not apply to the procurement of a  
 21 commodity that is available from an industry established under chapter 307  
 22 of title 18 and that is required under section 4124 of title 18 to be procured  
 23 from that industry.

24 **§ 8505. Audit**

25 For the purpose of audit and examination, the Comptroller General shall  
 26 have access to the records of—

27 (1) the Committee for Purchase From People Who Are Blind or Se-  
 28 verely Disabled and of each central nonprofit agency the Committee  
 29 designates under section 8503(e) of this title; and

30 (2) qualified nonprofit agencies for the blind and qualified nonprofit  
 31 agencies for other severely disabled that have sold commodities or serv-  
 32 ices under this chapter to the extent those records relate to the activi-  
 33 ties of the agency in a fiscal year in which a sale was made under this  
 34 chapter.

35 **§ 8506. Authorization of appropriations**

36 Necessary amounts may be appropriated to the Committee for Purchase  
 37 From People Who Are Blind or Severely Disabled to carry out this chapter.

38 **CHAPTER 87—KICKBACKS**

Sec.

8701. Definitions.

8702. Prohibited conduct.

8703. Contractor responsibilities.

8704. Inspection authority.

8705. Administrative offsets.  
 8706. Civil actions.  
 8707. Criminal penalties.

1     **§ 8701. Definitions**

2         In this chapter—

3             (1) **CONTRACTING AGENCY.**—The term “contracting agency”, when  
 4             used with respect to a prime contractor, means a department, agency,  
 5             or establishment of the Federal Government that enters into a prime  
 6             contract with a prime contractor.

7             (2) **KICKBACK.**—The term “kickback” means any money, fee, com-  
 8             mission, credit, gift, gratuity, thing of value, or compensation of any  
 9             kind that is provided to a prime contractor, prime contractor employee,  
 10            subcontractor, or subcontractor employee to improperly obtain or re-  
 11            ward favorable treatment in connection with a prime contract or a sub-  
 12            contract relating to a prime contract.

13            (3) **PRIME CONTRACT.**—The term “prime contract” means a con-  
 14            tract or contractual action entered into by the Government to obtain  
 15            supplies, materials, equipment, or services of any kind.

16            (4) **PRIME CONTRACTOR.**—The term “prime contractor” means a  
 17            person that has entered into a prime contract with the Government.

18            (5) **PRIME CONTRACTOR EMPLOYEE.**—The term “prime contractor  
 19            employee” means an officer, partner, employee, or agent of a prime  
 20            contractor.

21            (6) **SUBCONTRACT.**—The term “subcontract” means a contract or  
 22            contractual action entered into by a prime contractor or subcontractor  
 23            to obtain supplies, materials, equipment, or services of any kind under  
 24            a prime contract.

25            (7) **SUBCONTRACTOR.**—The term “subcontractor”—

26                 (A) means a person, other than the prime contractor, that offers  
 27                 to furnish or furnishes supplies, materials, equipment, or services  
 28                 under a prime contract or a subcontract entered into in connection  
 29                 with the prime contract; and

30                 (B) includes a person that offers to furnish or furnishes general  
 31                 supplies to the prime contractor or a higher tier subcontractor.

32            (8) **SUBCONTRACTOR EMPLOYEE.**—The term “subcontractor em-  
 33            ployee” means an officer, partner, employee, or agent of a subcon-  
 34            tractor.

35     **§ 8702. Prohibited conduct**

36         A person may not—

37             (1) provide, attempt to provide, or offer to provide a kickback;

38             (2) solicit, accept, or attempt to accept a kickback; or

1 (3) include the amount of a kickback prohibited by clause (1) or (2)  
2 in the contract price—

3 (A) a subcontractor charges a prime contractor or a higher tier  
4 subcontractor; or

5 (B) a prime contractor charges the Federal Government.

6 **§ 8703. Contractor responsibilities**

7 (a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency  
8 shall include in each prime contract the agency awards a requirement that  
9 the prime contractor shall—

10 (1) have in place and follow reasonable procedures designed to pre-  
11 vent and detect violations of section 8702 of this title in its own oper-  
12 ations and direct business relationships; and

13 (2) cooperate fully with a Federal Government agency investigating  
14 a violation of section 8702.

15 (b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a  
16 prime contractor shall cooperate fully with a Government agency inves-  
17 tigating a violation of section 8702 of this title.

18 (c) REPORTING REQUIREMENT.—

19 (1) IN GENERAL.—A prime contractor or subcontractor that has rea-  
20 sonable grounds to believe that a violation of section 8702 of this title  
21 may have occurred shall promptly report the possible violation in writ-  
22 ing to the inspector general of the contracting agency, the head of the  
23 contracting agency if the agency does not have an inspector general,  
24 or the Attorney General.

25 (2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an ad-  
26 ministrative or contractual action to suspend or debar a person who is  
27 eligible to enter into contracts with the Government, evidence that the  
28 person has supplied information to the Government pursuant to para-  
29 graph (1) is favorable evidence of the person's responsibility for the  
30 purposes of Federal procurement laws and regulations.

31 (d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a)  
32 does not apply to a prime contract—

33 (1) that is not greater than \$100,000; or

34 (2) for the acquisition of commercial items (as defined in section 103  
35 of this title).

36 **§ 8704. Inspection authority**

37 (a) IN GENERAL.—To ascertain whether there has been a violation of sec-  
38 tion 8702 of this title with respect to a prime contract, the Comptroller  
39 General and the inspector general of the contracting agency, or a represent-  
40 ative of the contracting agency designated by the head of the agency if the  
41 agency does not have an inspector general, shall have access to and may

1 inspect the facilities and audit the records of a prime contractor or subcon-  
 2 tractor under a prime contract awarded by the agency.

3 (b) EXCEPTION.—This section does not apply to a prime contract for the  
 4 acquisition of commercial items (as defined in section 103 of this title).

5 **§ 8705. Administrative offsets**

6 (a) DEFINITION.—In this section, the term “contracting officer” has the  
 7 meaning given that term in chapter 69 of this title.

8 (b) OFFSET AUTHORITY.—A contracting officer of a contracting agency  
 9 may offset the amount of a kickback provided, accepted, or charged in viola-  
 10 tion of section 8702 of this title against amounts the Federal Government  
 11 owes the prime contractor under the prime contract to which the kickback  
 12 relates.

13 (c) DUTIES OF PRIME CONTRACTOR.—

14 (1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On  
 15 direction of a contracting officer of a contracting agency with respect  
 16 to a prime contract, the prime contractor shall withhold from amounts  
 17 owed to a subcontractor under a subcontract of the prime contract the  
 18 amount of a kickback which was or may be offset against the prime  
 19 contractor under subsection (b). The contracting officer may order that  
 20 amounts withheld—

21 (A) be paid over to the contracting agency; or

22 (B) be retained by the prime contractor if the Government has  
 23 already offset the amount against the prime contractor.

24 (2) NOTICE.—The prime contractor shall notify the contracting offi-  
 25 cer when an amount is withheld and retained under paragraph (1)(B).

26 (d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF GOVERNMENT.—An  
 27 offset under subsection (b) of this section or a direction or order of a con-  
 28 tracting officer under subsection (c) of this section is a claim by the Govern-  
 29 ment for the purposes of chapter 69 of this title.

30 **§ 8706. Civil actions**

31 (a) AMOUNT.—The Federal Government in a civil action may recover  
 32 from a person—

33 (1) that knowingly engages in conduct prohibited by section 8702 of  
 34 this title a civil penalty equal to—

35 (A) twice the amount of each kickback involved in the violation;  
 36 and

37 (B) not more than \$10,000 for each occurrence of prohibited  
 38 conduct; and

39 (2) whose employee, subcontractor or subcontractor employee violates  
 40 section 8702 of this title by providing, accepting, or charging a kick-  
 41 back a civil penalty equal to the amount of that kickback.

1 (b) STATUTE OF LIMITATIONS.—A civil action under this section must be  
2 brought within 6 years after the later of the date on which—

3 (1) the prohibited conduct establishing the cause of action occurred;

4 or

5 (2) the Government first knew or should reasonably have known that  
6 the prohibited conduct had occurred.

7 **§ 8707. Criminal penalties**

8 A person that knowingly and willfully engages in conduct prohibited by  
9 section 8702 of this title shall be fined under title 18, imprisoned for not  
10 more than 10 years, or both.

11 **SEC. 2. CONFORMING AMENDMENT.**

12 Section 2410i(b)(1) of title 10, United States Code, is amended by strik-  
13 ing “small purchase threshold” and substituting “simplified acquisition  
14 threshold”.

15 **SEC. 3. CONFORMING CROSS-REFERENCES.**

16 (a) TITLE 5.—Title 5, United States Code, is amended as follows:

17 (1) In section 504(b)(1)(C)(ii)—

18 (A) strike “section 6 of the Contract Disputes Act of 1978 (41  
19 U.S.C. 605)” and substitute “section 6903 of title 41”; and

20 (B) strike “section 8 of that Act (41 U.S.C. 607)” and sub-  
21 stitute “section 6905 of title 41”.

22 (2) In section 551(1)(H), strike “chapter 2 of title 41;”.

23 (3) In section 595(e)(10), strike “title III of the Federal Property  
24 and Administrative Services Act of 1949, as amended (41 U.S.C. 251–  
25 260)” and substitute “part C of subtitle I of title 41”.

26 (4) In section 701(b)(1)(H), strike “chapter 2 of title 41;”.

27 (5) In section 3109(b)(3), strike “section 5” and substitute “section  
28 6101(b)–(d)”.

29 (6) In section 3374(c)(2), strike “section 27 of the Office of Federal  
30 Procurement Policy Act” and substitute “chapter 21 of title 41”.

31 (7) In section 3704(b)(2)(G), strike “section 27 of the Office of Fed-  
32 eral Procurement Policy Act” and substitute “chapter 21 of title 41”.

33 (8) In section 4105, strike “section 5” and substitute “section  
34 6101(b)–(d)”.

35 (9) In section 5102(e)(30), strike “section 8 of the Contract Dis-  
36 putes Act of 1978” and substitute “section 6905 of title 41”.

37 (10) In section 5372a—

38 (A) in subsection (a)(1), strike “section 8 of the Contract Dis-  
39 putes Act of 1978” and substitute “section 6905 of title 41”; and

40 (B) in subsection (a)(2), strike “section 8 of the Contract Dis-  
41 putes Act of 1978” and substitute “section 6905 of title 41”.

1 (11) In section 7342(e)(1), strike “title III of the Federal Property  
2 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
3 substitute “part C of subtitle I of title 41”.

4 (12) In section 8709(a), strike “section 5” and substitute “section  
5 6101(b)–(d)”.

6 (13) In section 8714a(a), strike “section 5” and substitute “section  
7 6101(b)–(d)”.

8 (14) In section 8714b(a), strike “section 5” and substitute “section  
9 6101(b)–(d)”.

10 (15) In section 8714c(a), strike “section 5” and substitute “section  
11 6101(b)–(d)”.

12 (16) In section 8902(a), strike “section 5” and substitute “section  
13 6101(b)–(d)”.

14 (17) In section 9003—

15 (A) in subsection (a), strike “section 5” and substitute “section  
16 6101(b)–(d)”;

17 (B) in subsection (c)(3), before clause (A), strike “the Contract  
18 Disputes Act of 1978” and substitute “chapter 69 of title 41”;

19 (C) in subsection (c)(3)(A), strike “section 8(c) of such Act”  
20 and substitute “section 6905(e) of title 41”; and

21 (D) in subsection (c)(3)(B), strike “section 10(a)(1) of such  
22 Act” and substitute “section 6904(b)(1) of title 41”.

23 (18) In section 9009, strike “section 26(f) of the Office of Federal  
24 Procurement Policy Act (41 U.S.C. 422(f))” and substitute “section  
25 1502(a) and (b) of title 41”.

26 (b) TITLE 10.—Title 10, United States Code, is amended as follows:

27 (1) In section 133(c)(1), strike “section 16(3) of the Office of Fed-  
28 eral Procurement Policy Act (41 U.S.C. 414(3))” and substitute “sec-  
29 tion 1702(c) of title 41”.

30 (2) In section 2013(a), strike “section 3709 of the Revised Statutes  
31 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

32 (3) In section 2194(b)(2), strike “title III of the Federal Property  
33 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
34 substitute “part C of subtitle I of title 41”.

35 (4) In section 2201—

36 (A) in subsection (b), strike “section 3732(a) of the Revised  
37 Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and  
38 (b)(1)–(3) of title 41”; and

39 (B) in subsection (c), strike “section 3732(a) of the Revised  
40 Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and  
41 (b)(1)–(3) of title 41”.

1 (5) In section 2207(b), strike “section 4(11) of the Office of Federal  
2 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section  
3 133 of title 41”.

4 (6) In section 2225(f)—

5 (A) in clause (1), strike “section 16(3) of the Office of Federal  
6 Procurement Policy Act (41 U.S.C. 414(3))” and substitute “sec-  
7 tion 1702(e) of title 41”; and

8 (B) in clause (2), strike “section 4(11) of the Office of Federal  
9 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “sec-  
10 tion 133 of title 41”.

11 (7) In section 2226(b), strike “section 4(12) of the Office of Federal  
12 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section  
13 103 of title 41”.

14 (8) In section 2302—

15 (A) in clause (3), strike “section 4 of the Office of Federal Pro-  
16 curement Policy Act (41 U.S.C. 403)” and substitute “chapter 1  
17 of title 41”;

18 (B) In clause (6), strike “section 25(c)(1) of the Office of Fed-  
19 eral Procurement Policy Act (41 U.S.C. 421(c)(1))” and sub-  
20 stitute “section 1302(a)(1) of title 41”; and

21 (C) In clause (7), strike “section 4 of the Office of Federal Pro-  
22 curement Policy Act (41 U.S.C. 403)” and substitute “section 133  
23 of title 41”.

24 (9) In section 2302a—

25 (A) in subsection (a), strike “section 4(11) of the Office of Fed-  
26 eral Procurement Policy Act” and substitute “section 133 of title  
27 41”; and

28 (B) In subsection (b), strike “section 33 of the Office of Federal  
29 Procurement Policy Act” and substitute “section 1905 of title  
30 41”.

31 (10) In section 2302b, strike “section 31 of the Office of Federal  
32 Procurement Policy Act” and substitute “section 1901 of title 41”.

33 (11) In section 2302c—

34 (A) in subsection (a)(1), strike “section 30 of the Office of Fed-  
35 eral Procurement Policy Act (41 U.S.C. 426)” and substitute  
36 “section 2301 of title 41”; and

37 (B) In subsection (b), strike “section 16(3) of the Office of Fed-  
38 eral Procurement Policy Act (41 U.S.C. 414(3))” and substitute  
39 “section 1702(e) of title 41”.

40 (12) In section 2304—

1 (A) in subsection (f)(1)(B)(iii), strike “section 16(3) of the Of-  
2 fice of Federal Procurement Policy Act (41 U.S.C. 414(3))” and  
3 substitute “section 1702(e) of title 41”;

4 (B) in subsection (f)(1)(C), strike “section 18 of the Office of  
5 Federal Procurement Policy Act (41 U.S.C. 416)” and substitute  
6 “section 1707 of title 41”;

7 (C) in subsection (f)(2)(D), strike “the Javits-Wagner-O’Day  
8 Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title  
9 41”;

10 (D) in subsection (g)(4), strike “section 31(f) of the Office of  
11 Federal Procurement Policy Act (41 U.S.C. 427)” and substitute  
12 “section 1901(f) of title 41”; and

13 (E) in subsection (h)(1), strike “The Walsh-Healey Act (41  
14 U.S.C. 35 et seq.)” and substitute “Chapter 65 of title 41”.

15 (13) In section 2304b—

16 (A) in subsection (e), strike “section 18 of the Office of Federal  
17 Procurement Policy Act (41 U.S.C. 416)” and substitute “section  
18 1707 of title 41”; and

19 (B) in subsection (f)(3), strike “section 18 of the Office of Fed-  
20 eral Procurement Policy Act (41 U.S.C. 416)” and substitute  
21 “section 1707 of title 41”.

22 (14) In section 2304e(a)(1), strike “section 18 of the Office of Fed-  
23 eral Procurement Policy Act (41 U.S.C. 416)” and substitute “section  
24 1707 of title 41”.

25 (15) In section 2306a(h)(3), strike “section 4(12) of the Office of  
26 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
27 “section 103 of title 41”.

28 (16) In section 2314, strike “Sections 3709 and 3735 of the Revised  
29 Statutes (41 U.S.C. 5 and 13)” and substitute “Sections 6101(b)–(d)  
30 and 6304 of title 41”.

31 (17) In section 2318—

32 (A) in subsection (a)(1), strike “section 20(a) of the Office of  
33 Federal Procurement Policy Act (41 U.S.C. 418(a))” and sub-  
34 stitute “section 1704(a) of title 41”; and

35 (B) in subsection (a)(2), strike “sections 20(b) and 20(c) of the  
36 Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))”  
37 and substitute “section 1704(b) and (e) of title 41”.

38 (18) In section 2321(h), strike “the Contract Disputes Act of 1978  
39 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”.

40 (19) In section 2324—

1 (A) in subsection (d)(1), strike “section 6 of the Contract Dis-  
2 putes Act of 1978 (41 U.S.C. 605)” and substitute “section 6903  
3 of title 41”;

4 (B) in subsection (d)(2), strike “section 7 of such Act (41  
5 U.S.C. 606)” and substitute “section 6904(a) of title 41”;

6 (C) in subsection (e)(1)(P), strike “section 39 of the Office of  
7 Federal Procurement Policy Act (41 U.S.C. 435)” and substitute  
8 “section 1127 of title 41”; and

9 (D) in subsection (e)(2)(C), strike “(41 U.S.C. 10b–1)” and  
10 substitute “(as added by section 7002(2) of the Omnibus Trade  
11 and Competitiveness Act of 1988)”.

12 (20) In section 2343, strike “section 3741 of the Revised Statutes  
13 (41 U.S.C. 22)” and substitute “section 6306 of title 41”.

14 (21) In section 2375(b), strike “section 34 of the Office of Federal  
15 Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906  
16 of title 41”.

17 (22) In section 2376(1), strike “section 4 of the Office of Federal  
18 Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter 1  
19 of title 41”.

20 (23) In section 2384—

21 (A) in subsection (b)(2), strike “section 4(12) of the Office of  
22 Federal Procurement Policy Act (41 U.S.C. 403(12))” and sub-  
23 stitute “section 103 of title 41”; and

24 (B) in subsection (b)(3), strike “section 4(11) of the Office of  
25 Federal Procurement Policy Act (41 U.S.C. 403(11))” and sub-  
26 stitute “section 133 of title 41”.

27 (24) In section 2393(d)—

28 (A) strike “section 4(11) of the Office of Federal Procurement  
29 Policy Act (41 U.S.C. 403(11))” and substitute “section 133 of  
30 title 41”; and

31 (B) strike “section 4(12) of the Office of Federal Procurement  
32 Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of  
33 title 41”.

34 (25) In section 2402—

35 (A) in subsection (c), strike “section 4(11) of the Office of Fed-  
36 eral Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
37 “section 133 of title 41”; and

38 (B) in subsection (d)(2), strike “section 4(12) of the Office of  
39 Federal Procurement Policy Act (41 U.S.C. 403(12))” and sub-  
40 stitute “section 103 of title 41”.

41 (26) In section 2408—

1 (A) in subsection (a)(4)(A), strike “section 4(11) of the Office  
2 of Federal Procurement Policy Act (41 U.S.C. 403(11))” and  
3 substitute “section 133 of title 41”; and

4 (B) in subsection (a)(4)(B), strike “section 4(12) of the Office  
5 of Federal Procurement Policy Act (41 U.S.C. 403(12))” and  
6 substitute “section 103 of title 41”.

7 (27) In section 2410(c), strike “section 4(11) of the Office of Fed-  
8 eral Procurement Policy Act” and substitute “section 133 of title 41”.

9 (28) In section 2410b(c), strike “section 4(12) of the Office of Fed-  
10 eral Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
11 “section 103 of title 41”.

12 (29) In section 2410d—

13 (A) in subsection (b)(2)(A), strike “section 5(3) of the Javits-  
14 Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section  
15 8501(7) of title 41”;

16 (B) in subsection (b)(2)(B), strike “handicapped, as defined in  
17 section 5(4) of such Act (41 U.S.C. 48b(4))” and substitute “dis-  
18 abled, as defined in section 8501(6) of title 41”; and

19 (C) in subsection (b)(2)(C), strike “section 2(e) of such Act (41  
20 U.S.C. 47(c))” and substitute “section 8503(e) of title 41”.

21 (30) In section 2410g(d)(1), strike “section 4(12) of the Office of  
22 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
23 “section 103 of title 41”.

24 (31) In section 2410i(b)(1), strike “section 4(11) of the Office of  
25 Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
26 “section 133 of title 41”.

27 (32) In section 2410m—

28 (A) in subsection (a), before clause (1), strike “the Contract  
29 Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute  
30 “chapter 69 of title 41”;

31 (B) in subsection (a)(2), strike “section 7 of such Act (41  
32 U.S.C. 606)” and substitute “section 6904(a) of title 41”; and

33 (C) in subsection (b)(1)(A), strike “section 10(a) of the Con-  
34 tract Disputes Act of 1978 (41 U.S.C. 609(a))” and substitute  
35 “section 6904(b) of title 41”.

36 (33) In section 2457(e), strike “section 2 of the Buy American Act  
37 (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

38 (34) In section 2461(e)(1), strike “section 2 of the Javits-Wagner-  
39 O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title 41”.

1 (35) In section 2482(b)(1), strike “section 4(6) of the Office of Fed-  
2 eral Procurement Policy Act (41 U.S.C. 403(6))” and substitute “sec-  
3 tion 106 of title 41”.

4 (36) In the chapter analysis for subchapter V of chapter 148, in the  
5 item for section 2533, strike “the Buy American Act” and substitute  
6 “chapter 83 of title 41”.

7 (37) In section 2533—

8 (A) in the section heading, strike “the Buy American Act” and  
9 substitute “chapter 83 of title 41”; and

10 (B) strike “section 2 of the Buy American Act (41 U.S.C.  
11 10a)” and substitute “section 8302 of title 41”.

12 (38) In section 2533a(i), strike “section 34 of the Office of Federal  
13 Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906  
14 of title 41”.

15 (39) In section 2534(g)(2), strike “section 33 of the Office of Fed-  
16 eral Procurement Policy Act (41 U.S.C. 429)” and substitute “section  
17 1905 of title 41”.

18 (40) In section 2562(a)(1), strike “title III of the Federal Property  
19 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
20 substitute “part C of subtitle I of title 41”.

21 (41) In section 2576(a), strike “title III of the Federal Property and  
22 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
23 stitute “part C of subtitle I of title 41”.

24 (42) In section 2636(b)(3), strike “section 4(11) of the Office of  
25 Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
26 “section 133 of title 41”.

27 (43) In section 2667(f)(1), strike “Notwithstanding subsection (a)(3)  
28 or subtitle I of title 40 and title III of the Federal Property and Ad-  
29 ministrative Services Act of 1949 (to the extent subtitle I and title III  
30 are inconsistent with this subsection)” and substitute “Notwithstanding  
31 subtitle I of title 40 and part C of subtitle I of title 41 (to the extent  
32 those provisions are inconsistent with this subsection) or subsection  
33 (a)(2) of this section”.

34 (44) In section 2676(a), strike “title III of the Federal Property and  
35 Administrative Services Act of 1949, as amended (41 U.S.C. 251 et  
36 seq.)” and substitute “part C of subtitle I of title 41”.

37 (45) In section 2691(b), strike “title III of the Federal Property and  
38 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
39 stitute “part C of subtitle I of title 41”.

1 (46) In section 2696(a), strike “title III of the Federal Property and  
2 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
3 stitute “part C of subtitle I of title 41”.

4 (47) In section 2701(i)(1), in the catchline, strike “MILLER ACT”  
5 and substitute “SECTIONS 3131 AND 3133 OF TITLE 40”.

6 (48) In section 2836(g), strike “the Contract Disputes Act of 1978  
7 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”.

8 (49) In section 2854a(d)(1), strike “title III of the Federal Property  
9 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
10 substitute “part C of subtitle I of title 41”.

11 (50) In section 2878(d)(2), strike “title III of the Federal Property  
12 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
13 substitute “part C of subtitle I of title 41”.

14 (51) In the chapter analysis for chapter 633, in the item for section  
15 7299, strike “Walsh-Healey Act” and substitute “chapter 65 of title  
16 41”.

17 (52) In section 7299—

18 (A) in the section heading, strike “Walsh-Healey Act” and sub-  
19 stitute “chapter 65 of title 41”; and

20 (B) strike “the Walsh-Healey Act (41 U.S.C. 35 et seq.)” and  
21 substitute “chapter 65 of title 41”.

22 (53) In section 7305(d)—

23 (A) strike “title III of the Federal Property and Administrative  
24 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
25 “part C of subtitle I of title 41”; and

26 (B) strike “under subtitle I of title 40 and such title III” and  
27 substitute “under those provisions”.

28 (54) In section 9444(b)(1), strike “title III of the Federal Property  
29 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
30 substitute “part C of subtitle I of title 41”.

31 (55) In section 9781(g), strike “title III of the Federal Property and  
32 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
33 stitute “part C of subtitle I of title 41”.

34 (e) TITLE 14.—Title 14, United States Code, is amended as follows:

35 (1) In section 92(d), strike “title III of the Federal Property and  
36 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
37 stitute “part C of subtitle I of title 41”.

38 (2) In section 93(h), strike “title III of the Federal Property and  
39 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
40 stitute “part C of subtitle I of title 41”.

1 (3) In section 641(a), strike “title III of the Federal Property and  
2 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
3 stitute “part C of subtitle I of title 41”.

4 (4) In section 685(e)(1), strike “title III of the Federal Property and  
5 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
6 stitute “part C of subtitle I of title 41”.

7 (d) TITLE 18.—Title 18, United States Code, is amended as follows:

8 (1) In section 3672, strike “section 3709 of the Revised Statutes of  
9 the United States” and substitute “section 6101(b)–(d) of title 41”.

10 (2) In section 4124(c), strike “section 6(d)(4) of the Office of Fed-  
11 eral Procurement Policy Act” and substitute “section 1122(a)(4) of  
12 title 41”.

13 (e) TITLE 23.—Title 23, United States Code, is amended as follows:

14 (1) In section 107(a), strike “the Act of February 26, 1931, 46 Stat.  
15 1421” and substitute “sections 3114–3116 and 3118 of title 40”.

16 (2) In section 140—

17 (A) in subsection (b), strike “section 3709 of the Revised Stat-  
18 utes, as amended (41 U.S.C. 5),” and substitute “section  
19 6101(b)–(d) of title 41”; and

20 (B) in subsection (c)—

21 (i) strike “section 3709 of the Revised Statutes, as amend-  
22 ed (41 U.S.C. 5),” and substitute “section 6101(b)–(d) of  
23 title 41”; and

24 (ii) strike “section 302(e) of the Federal Property and Ad-  
25 ministrative Services Act of 1949 (41 U.S.C. 252(e))” and  
26 substitute “section 3107 of title 41”.

27 (3) In section 210(e), strike “the Act of February 26, 1931; 46 Stat.  
28 1421” and substitute “sections 3114–3116 and 3118 of title 40”.

29 (4) In section 502(b)(5), strike “Section 3709 of the Revised Stat-  
30 utes (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

31 (f) THE INTERNAL REVENUE CODE OF 1986.—Section 7608(e)(1) of the  
32 Internal Revenue Code of 1986 (26 U.S.C. 7608(e)(1)) is amended—

33 (1) in clause (A)(i)(II), by striking “sections 11(a) and 22” and sub-  
34 stituting “sections 6301(a) and (b)(1)–(3) and 6306”;

35 (2) in clause (A)(i)(III), by striking “section 255” and substituting  
36 “chapter 45”; and

37 (3) in clause (A)(i)(V), by striking “section 254(a) and (e)” and sub-  
38 stituting “section 3901”.

39 (g) TITLE 28.—Title 28, United States Code, is amended as follows:

40 (1) In the last sentence of section 524(e)(1), strike “section 3709  
41 of the Revised Statutes of the United States (41 U.S.C. 5), title III

1 of the Federal Property and Administrative Services Act of 1949 (41  
2 U.S.C. 251 and following),” and substitute “part C of subtitle I and  
3 section 6101(b)–(d) of title 41”.

4 (2) In section 604(a)(10)(C), strike “section 3709 of the Revised  
5 Statutes of the United States (41 U.S.C. 5)” and substitute “section  
6 6101(b)–(d) of title 41”.

7 (3) In section 624(3), strike “section 3709 of the Revised Statutes,  
8 as amended (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title  
9 41”.

10 (4) In section 753(g), strike “section 3709 of the Revised Statutes  
11 of the United States, as amended (41 U.S.C. 5)” and substitute “sec-  
12 tion 6101(b)–(d) of title 41”.

13 (5) In section 1295—

14 (A) in subsection (a)(10), strike “section 8(g)(1) of the Con-  
15 tract Disputes Act of 1978 (41 U.S.C. 607(g)(1))” and substitute  
16 “section 6907(a)(1) of title 41”;

17 (B) in subsection (b), strike “section 10(b) of the Contract Dis-  
18 putes Act of 1978 (41 U.S.C. 609(b))” and substitute “section  
19 6907(b) of title 41”; and

20 (C) in subsection (c), strike “section 10(b) of the Contract Dis-  
21 putes Act of 1978” and substitute “section 6907(b) of title 41”.

22 (6) In section 1346(a)(2), strike “sections 8(g)(1) and 10(a)(1) of  
23 the Contract Disputes Act of 1978” and substitute “sections  
24 6904(b)(1) and 6907(a)(1) of title 41”.

25 (7) In the chapter analysis for chapter 91, in item 1499, strike  
26 “Contract Work Hours and Safety Standards Act” and substitute  
27 “chapter 37 of title 40”.

28 (8) In section 1491(a)(2), strike “section 10(a)(1) of the Contract  
29 Disputes Act of 1978” and substitute “section 6904(b)(1) of title 41”.

30 (9) In section 1499, in the section heading, strike “**Contract**  
31 **Work Hours and Safety Standards Act**” and substitute  
32 “**chapter 37 of title 40**”.

33 (10) In section 2401(a), strike “the Contract Disputes Act of 1978”  
34 and substitute “chapter 69 of title 41”.

35 (11) In section 2412—

36 (A) in subsection (d)(2)(E), strike “the Contract Disputes Act  
37 of 1978” and substitute “chapter 69 of title 41”; and

38 (B) in subsection (d)(3), strike “the Contract Disputes Act of  
39 1978” and substitute “chapter 69 of title 41”.

40 (12) In section 2414, strike “the Contract Disputes Act of 1978”  
41 and substitute “chapter 69 of title 41”.

1 (13) In section 2517(a), strike “the Contract Disputes Act of 1978”  
2 and substitute “chapter 69 of title 41”.

3 (h) TITLE 31.—Title 31, United States Code, is amended as follows:

4 (1) In section 506, strike “section 5(a) of the Office of Federal Pro-  
5 curement Policy Act (41 U.S.C. 404(a))” and substitute “section  
6 1101(a) of title 41”.

7 (2) In section 781(c)(1), strike “section 3709 of the Revised Stat-  
8 utes (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

9 (3) In section 1344(g)(2)(A), strike “(41 U.S.C. 5a)” and substitute  
10 “(ch. 744, 60 Stat. 811)”.

11 (4) In section 3567, strike “section 4(1) of the Office of Federal  
12 Procurement Policy Act (41 U.S.C. 403(1))” and substitute “section  
13 132 of title 41”.

14 (5) In section 3718(b)(1)(A), strike “title III of the Federal Prop-  
15 erty and Administrative Services Act of 1949 (41 U.S.C. 251 and fol-  
16 lowing)” and substitute “part C of subtitle I of title 41”.

17 (6) In section 3902(a), strike “section 12 of the Contract Disputes  
18 Act of 1978 (41 U.S.C. 611)” and substitute “section 6909(a)(1) and  
19 (b) of title 41”.

20 (7) In section 3907—

21 (A) in subsection (a), strike “section 6 of the Contract Disputes  
22 Act of 1978 (41 U.S.C. 605)” and substitute “section 6903 of  
23 title 41”;

24 (B) in subsection (b)(1)(A), strike “the Contract Disputes Act  
25 of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of  
26 title 41”;

27 (C) in subsection (b)(2)—

28 (i) strike “section 12 of the Contract Disputes Act of 1978  
29 (41 U.S.C. 611)” and substitute “section 6909(a)(1) and (b)  
30 of title 41”; and

31 (ii) strike “section 12” and substitute “section 6909(a)(1)  
32 and (b)”;

33 (D) in subsection (c), strike “the Contract Disputes Act of 1978  
34 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”.

35 (8) In section 6202(c)(2), strike “section 6(d)(5) of the Office of  
36 Federal Procurement Policy Act (41 U.S.C. 405(d)(5))” and substitute  
37 “section 1122(a)(5) of title 41”.

38 (9) In section 9703(b)(3), as added by section 638(b)(1) of the Act  
39 of October 6, 1992 (Public Law 102–393, 106 Stat. 1779), strike “sec-  
40 tion 3709 of the Revised Statutes of the United States (41 U.S.C. 5),  
41 title III of the Federal Property and Administrative Services Act of

1 1949 (41 U.S.C. 251 et seq.),” and substitute “part C of subtitle I  
2 and section 6101(b)–(d) of title 41”.

3 (i) TITLE 35.—Title 35, United States Code, is amended as follows:

4 (1) In section 2(b)(4)(A), strike “title III of the Federal Property  
5 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
6 substitute “part C of subtitle I of title 41”.

7 (2) In section 203(b), strike “the Contract Disputes Act (41 U.S.C.  
8 § 601 et seq.)” and substitute “chapter 69 of title 41”.

9 (j) TITLE 38.—Title 38, United States Code, is amended as follows:

10 (1) In section 1720(e)(2), strike “section 2(b)(1) of the Service Con-  
11 tract Act of 1965 (41 U.S.C. 351(b)(1))” and substitute “section  
12 6704(a) of title 41”.

13 (2) In section 1966(a), strike “section 3709 of the Revised Statutes,  
14 as amended (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title  
15 41”.

16 (3) In section 3720(b), strike “title III of the Federal Property and  
17 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
18 stitute “part C of subtitle I of title 41”.

19 (4) In section 7317(f), strike “section 3709 of the Revised Statutes  
20 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

21 (5) In section 7802(f), strike “section 3709 of the Revised Statutes  
22 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

23 (6) In section 8122—

24 (A) in subsection (a)(1), strike “section 3709 of the Revised  
25 Statutes (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of  
26 title 41”; and

27 (B) in subsection (c)—

28 (i) strike “(41 U.S.C. 252(e))”; and

29 (ii) strike “section 304 of that Act (41 U.S.C. 254)” and  
30 substitute “sections 3901 and 3905 of title 41”.

31 (7) In section 8153(a)—

32 (A) in paragraph (3)(B)(ii), strike “section 22 of the Office of  
33 Federal Procurement Policy Act (41 U.S.C. 418b)” and substitute  
34 “section 1706 of title 41”; and

35 (B) in paragraph (3)(D), strike “section 303(f) of the Federal  
36 Property and Administrative Services Act of 1949 (41 U.S.C.  
37 253(f))” and substitute “section 3303(d) of title 41”.

38 (8) In section 8201(e), strike “section 3709 of the Revised Statutes  
39 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

40 (k) TITLE 39.—Section 410(b) of title 39, United States Code, is amend-  
41 ed by striking clause (5) and substituting—

1 “(5) chapters 65 and 67 of title 41;”.

2 (l) TITLE 40.—Title 40, United States Code, is amended as follows:

3 (1) In the chapter analysis for chapter 1, in item 111, strike “Fed-  
4 eral Property and Administrative Services Act of 1949” and substitute  
5 “part C of subtitle I of title 41”.

6 (2) In section 102, before clause (1), strike “title III of the Federal  
7 Property and Administrative Services Act of 1949 (41 U.S.C. 251 et  
8 seq.)” and substitute “part C of subtitle I of title 41”.

9 (3) In section 111—

10 (A) in the section heading, strike “**Federal Property and**  
11 **Administrative Services Act of 1949**” and substitute  
12 “**part C of subtitle I of title 41**”; and

13 (B) before clause (1), strike “title III of the Federal Property  
14 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
15 and substitute “part C of subtitle I of title 41”.

16 (4) In section 113(b)—

17 (A) in the catchline, strike “THE OFFICE OF FEDERAL PRO-  
18 CUREMENT POLICY ACT” and substitute “PART B OF SUBTITLE  
19 I OF TITLE 41”; and

20 (B) strike “the Office of Federal Procurement Policy Act (41  
21 U.S.C. 401 et seq.)” and substitute “part B of subtitle I of title  
22 41”.

23 (5) In section 311—

24 (A) in subsection (a), strike “title III of the Federal Property  
25 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
26 and substitute “part C of subtitle I of title 41”; and

27 (B) in subsection (b), strike “title III of the Federal Property  
28 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
29 and substitute “part C of subtitle I of title 41”.

30 (6) In section 501(b)(2)(B), strike “the Office of Federal Procure-  
31 ment Policy Act (41 U.S.C. 401 et seq.)” and substitute “part B of  
32 subtitle I of title 41”.

33 (7) In section 502—

34 (A) in subsection (b)(1)(A)(i), strike “section 5(3) of the Javits-  
35 Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section  
36 8501(7) of title 41”;

37 (B) in subsection (b)(1)(A)(ii), strike “handicapped (as defined  
38 in section 5(4) of the Javits-Wagner-O’Day Act (41 U.S.C.  
39 48b(4)))” and substitute “disabled (as defined in section 8501(6)  
40 of title 41)”;

1 (C) in subsection (b)(1)(B), strike “the Javits-Wagner-O’Day  
2 Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title  
3 41”; and

4 (D) in subsection (b)(2), strike “section 2 of the Javits-Wagner-  
5 O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title  
6 41”.

7 (8) In section 503(b)—

8 (A) in paragraph (1), strike “the Office of Federal Procurement  
9 Policy Act (41 U.S.C. 401 et seq.)” and substitute “part B of sub-  
10 title I of title 41”; and

11 (B) in paragraph (3)—

12 (i) in the catchline, strike “SECTION 3709 OF REVISED  
13 STATUTES” and substitute “SECTION 6101(b)–(d) OF TITLE  
14 41”; and

15 (ii) strike “Section 3709 of the Revised Statutes (41  
16 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

17 (9) In section 506(a)(1)(D), strike “the Office of Federal Procure-  
18 ment Policy Act (41 U.S.C. 401 et seq.)” and substitute “part B of  
19 subtitle I of title 41”.

20 (10) In section 545(f), strike “Section 3709 of the Revised Statutes  
21 (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

22 (11) In section 593(a)(2), strike “the Javits-Wagner-O’Day Act (41  
23 U.S.C. 46 et seq.)” and substitute “chapter 85 of title 41”.

24 (12) In section 1305, strike “title III of the Federal Property and  
25 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
26 stitute “part C of subtitle I of title 41”.

27 (13) In section 1308, strike “title III of the Federal Property and  
28 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
29 stitute “part C of subtitle I of title 41”.

30 (14) In section 3148, strike “section 3709 of the Revised Statutes  
31 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

32 (15) In section 3304(d)(2), strike “title III of the Federal Property  
33 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
34 substitute “part C of subtitle I of title 41”.

35 (16) In section 3305(a)—

36 (A) in paragraph (1), strike “title III of the Federal Property  
37 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
38 and substitute “part C of subtitle I of title 41”; and

39 (B) in paragraph (2), strike “title III of the Federal Property  
40 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
41 and substitute “part C of subtitle I of title 41”.

1 (17) In section 3308(a), strike “section 3709 of the Revised Statutes  
2 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

3 (18) In section 3310(2), strike “section 303 of the Federal Property  
4 and Administrative Services Act of 1949 (41 U.S.C. 253)” and sub-  
5 stitute “sections 3106 and 3301–3304 of title 41”.

6 (19) In section 3701(b)(3)(A)(ii), strike “the Walsh-Healey Act (41  
7 U.S.C. 35 et seq.)” and substitute “chapter 65 of title 41”.

8 (20) In section 3704(b)(1), strike “sections 4 and 5 of the Walsh-  
9 Healey Act (41 U.S.C. 38, 39)” and substitute “sections 6507 and  
10 6508 of title 41”.

11 (21) In section 3707, strike “section 4 of the Office of Federal Pro-  
12 curement Policy Act (41 U.S.C. 403)” and substitute “section 103 of  
13 title 41”.

14 (22) In section 6111(b)(2)(D), strike “section 3709 of the Revised  
15 Statutes (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title  
16 41”.

17 (23) In section 8711(d), strike “section 3709 of the Revised Statutes  
18 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

19 (24) In section 11101—

20 (A) in clause (1), strike “section 4 of the Office of Federal Pro-  
21 curement Policy Act (41 U.S.C. 403)” and substitute “section 103  
22 of title 41”; and

23 (B) in clause (2), strike “section 4 of the Act (41 U.S.C. 403)”  
24 and substitute “section 132 of title 41”.

25 (m) TITLE 44.—Title 44, United States Code, is amended as follows:

26 (1) In the chapter analysis for chapter 3, in the item for section 311,  
27 strike “the Federal Property and Administrative Services Act” and  
28 substitute “subtitle I of title 40 and part C of subtitle I of title 41”.

29 (2) In section 311—

30 (A) in the section heading, strike “the Federal Property and  
31 Administrative Services Act” and substitute “subtitle I of title 40  
32 and part C of subtitle I of title 41;

33 (B) in subsection (a), strike “title III of the Federal Property  
34 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
35 and substitute “part C of subtitle I of title 41”; and

36 (C) in subsection (c), strike “section 3709 of the Revised Stat-  
37 utes (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title  
38 41”.

39 (n) TITLE 49.—Title 49, United States Code, is amended as follows:

1 (1) In section 103(e), strike “title III of the Federal Property and  
2 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
3 stitute “part C of subtitle I of title 41”.

4 (2) In section 1113(b)(1)(B) strike “section 3709 of the Revised  
5 Statutes (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title  
6 41”.

7 (3) In section 5334(j)(2), strike “Section 3709 of the Revised Stat-  
8 utes (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

9 (4) In section 10721, strike “Section 3709 of the Revised Statutes  
10 (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

11 (5) In section 13712, strike “Section 3709 of the Revised Statutes  
12 (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

13 (6) In section 15504, strike “Section 3709 of the Revised Statutes  
14 (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

15 (7) In section 40110—

16 (A) in subsection (d)(2)(A), strike “Title III of the Federal  
17 Property and Administrative Services Act of 1949 (41 U.S.C.  
18 252–266)” and substitute “Part C of subtitle I of title 41”;

19 (B) in subsection (d)(2)(B), strike “The Office of Federal Pro-  
20 curement Policy Act (41 U.S.C. 401 et seq.)” and substitute  
21 “Part B of subtitle I of title 41”;

22 (C) in subsection (d)(2)(C), strike “, except for section 315 (41  
23 U.S.C. 265). For the purpose of applying section 315 of that Act  
24 to the system,” and substitute “. However, section 4705 of title  
25 41 shall apply to the new acquisition management system devel-  
26 oped and implemented pursuant to paragraph (1). For the purpose  
27 of applying section 4705 of title 41 to the system,”; and

28 (D) in subsection (d)(3)—

29 (i) in the catchline, strike “THE OFFICE OF FEDERAL PRO-  
30 CUREMENT POLICY ACT” and substitute “PART B OF SUB-  
31 TITLE I OF TITLE 41”;

32 (ii) strike “section 27 of the Office of Federal Procurement  
33 Policy Act (41 U.S.C. 423)” and substitute “chapter 21 of  
34 title 41”; and

35 (iii) in subparagraph (A), strike “Subsections (f) and (g)”  
36 and substitute “Sections 2101 and 2106 of title 41”.

37 (8) In section 40118(f)(2), strike “section 4(12) of the Office of  
38 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
39 “section 103 of title 41”.

40 (9) In section 47305(d), strike “Section 3709 of the Revised Stat-  
41 utes (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

1 **SEC. 4. LEGISLATIVE PURPOSE AND CONSTRUCTION.**

2 (a) PURPOSE.—The purpose of this Act is to revise, codify, and enact  
3 without substantive change the general and permanent laws of the United  
4 States related to public contracts in order to remove ambiguities, contradic-  
5 tions, and other imperfections and to repeal obsolete, superfluous, and su-  
6 perseded provisions.

7 (b) NO SUBSTANTIVE CHANGE.—

8 (1) IN GENERAL.—This Act makes no substantive change in existing  
9 law and may not be construed as making a substantive change in exist-  
10 ing law.

11 (2) DEEMED DATE OF ENACTMENT FOR CERTAIN PURPOSES.—For  
12 purposes of determining whether one provision of law supersedes an-  
13 other based on enactment later in time, and otherwise to ensure that  
14 this Act makes no substantive change in existing law, the date of enact-  
15 ment of a provision restated in section 1 of this Act is deemed to re-  
16 main unchanged, continuing to be the date of enactment of the under-  
17 lying provision of public law that is being restated.

18 (3) INCONSISTENT LAWS ENACTED AFTER DECEMBER 31, 2003.—  
19 This Act restates certain laws enacted before January 1, 2004. Any  
20 law enacted after December 31, 2003, that is inconsistent with this  
21 Act, including any law purporting to amend or repeal a provision that  
22 is repealed by this Act, supersedes this Act to the extent of the incon-  
23 sistency.

24 (c) REFERENCES.—A reference to a law replaced by section 1 of this Act,  
25 including a reference in a regulation, order, or other law, is deemed to refer  
26 to the corresponding provision enacted by this Act.

27 (d) CONTINUING EFFECT.—An order, rule, or regulation in effect under  
28 a law replaced by section 1 of this Act continues in effect under the cor-  
29 responding provision enacted by this Act until repealed, amended, or super-  
30 seded.

31 (e) ACTIONS AND OFFENSES UNDER PRIOR LAW.—An action taken or  
32 an offense committed under a law replaced by section 1 of this Act is  
33 deemed to have been taken or committed under the corresponding provision  
34 enacted by this Act.

35 (f) INFERENCES.—An inference of a legislative construction is not to be  
36 drawn by reason of the location in the United States Code of a provision  
37 enacted by this Act or by reason of a caption or catch line of the provision.

38 (g) SEVERABILITY.—If a provision enacted by this Act is held invalid, all  
39 valid provisions that are severable from the invalid provision remain in ef-  
40 fect. If a provision enacted by this Act is held invalid in any of its applica-

1 tions, the provision remains valid for all valid applications that are severable  
2 from any of the invalid applications.

3 **SEC. 5. REPEALS.**

4 (a) INFERENCE OF REPEAL.—The repeal of a law by this Act may not  
5 be construed as a legislative inference that the provision was or was not in  
6 effect before its repeal.

7 (b) REPEALER SCHEDULE.—The laws specified in the following schedule  
8 are repealed, except for rights and duties that matured, penalties that were  
9 incurred, and proceedings that were begun before the date of enactment of  
10 this Act.

Schedule of Laws Repealed  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
1875 Mar. 3	133	2	18	455	10	
1877 Feb. 27	69	(16th complete par. on p. 249)	19	249	22	6306
1884 July 7	332	(words after "fifty five thousand dollars" in 3d par. under heading "Miscellaneous Objects Under the Treasury Department").	23	204	24	6308
1920 June 5	240	(last par. under heading "Purchase of Articles Manufactured at Government Arsenals").	41	975	23	6307
1921 June 30	33	1 (last proviso on p. 78)	42	78	11a	6302
1922 July 1	259	(1st proviso on p. 812)	42	812	23	6307
1933 Mar. 3	212	title III, § 1 title III, § 2 title III, § 3 title III, § 4 title III, § 5 title III, § 7	47 47 47 47 47 47	1520 1520 1520 1521 1521 1521	10c 10a 10b 10e note 10e note 10a note 24a	8301 8302 8303
1934 Jan. 25 June 16	5 553	(related to R.S. §3741)	48 48 48 48 48	337 974 975 975 975	22 28 29 30 31	6306

June 27 .....	847 .....	5 .....	48 975 .....	32 .....	6306 .....
1935	78 .....	6 .....	48 975 .....	33 .....	
Apr. 24 .....	815 .....	510 (related to R.S. § 3741) .....	48 1264 .....	22 .....	
Aug. 29 .....	816 .....				
1936					
Apr. 17 .....	233 .....	1 (last par. (related to R.S. § 3709) under heading "Botanic Garden") .....	49 161 .....	24a .....	
June 30 .....	881 .....	1 (last par. (related to R.S. § 3744) under heading "Botanic Garden") .....	49 990 .....	34 .....	
		1 (matter before subsec. (a) less words related to definition of "agency of the United States") .....	49 991 .....	24a .....	
		1 (matter before subsec. (a) related to definition of "agency of the United States") .....			
		1(a)-(d) .....	49 2036 .....	6kk .....	6502 .....
		2 .....	49 2036 .....	16b .....	
		3 .....	49 2037 .....	35 .....	6501 .....
		5 .....	49 2037 .....	35 .....	6502 .....
		6 .....	49 2037 .....	36 .....	6503 .....
		7 .....	49 2037 .....	37 .....	6504 .....
		8 .....	49 2038 .....	39 .....	6508 .....
		9 .....	49 2038 .....	40 .....	6506 .....
		10 .....	49 2039 .....	41 .....	6501 .....
		11 .....	49 2039 .....	42 .....	6511 .....
		12 .....	49 2039 .....	43 .....	6505 .....
		13 .....	49 2039 .....	43a .....	6509 .....
		14 .....	49 2039 .....	43b .....	6510 .....
			49 2039 .....	44 .....	6502 .....
			49 2039 .....	45 .....	
				35 note .....	
1937					
May 18 .....	223 .....	1 (last par. (related to R.S. § 3709) under heading "Botanic Garden") .....	50 181 .....	6kk .....	
June 2 .....	293 .....	1 (last par. (related to R.S. § 3744) under heading "Botanic Garden") .....	50 181 .....	16b .....	
Aug. 26 .....	821 .....	(related to R.S. § 3741) .....	50 245 .....	23 .....	6306 .....
			50 838 .....	22 .....	
1938					
May 17 .....	236 .....	1 (1st par. (related to R.S. § 3709) on p. 393) .....	52 393 .....	6kk .....	
June 25 .....	697 .....	1 (1st par. (related to R.S. § 3744) on p. 393) .....	52 393 .....	16b .....	
		2(a)(1) (1st sentence words before "hereafter") .....	52 1196 .....	46 .....	8502 .....
		2(a)(1) (1st sentence words after "a list") .....	52 1196 .....	47 .....	8503 .....
		3 .....	52 1196 .....	47 .....	8501 .....
		4 .....	52 1196 .....	47 .....	8503 .....
		5 .....	52 1196 .....	48 .....	8504 .....
		6 .....	52 1196 .....	48a .....	8505 .....
			52 1196 .....	48b .....	8501 .....
			52 1196 .....	48c .....	8506 .....

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Statutes at Large

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1939						
June 16	208	1 (3d complete par. (related to R.S. § 3709) on p. 834) 1 (3d complete par. (related to R.S. § 3744) on p. 834) 13 (related to R.S. § 3744)	53 53 53	834 834 1197	46 note 6kk 16b 16d	..... ..... .....
Aug. 4	418					
1940						
June 18	395	1 (last par. (related to R.S. § 3709) under heading "Botanic Garden") 1 (last par. (related to R.S. § 3744) under heading "Botanic Garden")	54 54	474 474	6kk 16b	..... .....
June 24	412		54	504	6b	6102
June 28	440	13	54	681	40	6506
Oct. 9	779	1 (related to R.S. § 3737)	54	1029	15	6305
Oct. 10	851	2(a)	54	1110	6a	6102
		2(f)	54	1110	6a	6102
		2(h)	54	1110	6a	6102
		2(i)	54	1110	6a	6102
		2(j)	54	1110	6a	6102
		3(a)	54	1111	6b	.....
		3(b)	54	1111	6b	.....
1941						
Oct. 21	452		55	743	1, 2, 3, 4, 4a, 16, 17, 18, 19	.....
1942						
May 13	306	1	56	277	35	6502
June 22	432	2	56	375	49	6309
		(1st complete par. on p. 493)	56	376	50	6309
July 2	472		56	493	6	.....
1944						
July 1	358	1-3 4(b)-13(c) 13(d) 13(e)-15	58 58 58 58	649 651 662 662	101-103 104-113 113 113-115	..... ..... ..... .....



Schedule of Laws Repealed—Continued  
Statutes at Large

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		303B(h)			253b	3706
		303B(i)			253b	3707
		303B(j)			253b	3307
		303B(k), (l)			253b	3708
		303B(m)			253b	4702
		303C			253c	3310
		303D			253d	4703
		303F			253f	3309
		303G			253g	4704
		303H			253h	4103
		303I			253i	4105
		303J			253j	4106
		303K			253k	4101
		303L			253l	3902
		303M			253m	3308
		304(a)	63	395	254	3901
		304(b)	63	395	254	3905
		304A(a)			254b	3502
		304A(b)			254b	3503
		304A(c)			254b	3504
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		304A(g)			254b	3508
		304A(h)			254c	3501
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		304C			254d	4706
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1951 May 15 Oct. 31	75 654	(related to R.S. § 3737)	65	41	15	6305
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		3(8), (9)	65	708	6a	6102
		4(9)	65	709	6a	
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		301 (related to redesignation of § 11 to § 12)	66	308	45	6502
		301 ("Sec. 10")	66	308	43a	6509
		1(m)	66	594	251-255, 260	3102, 3105, 3301-3304, 3905, 4501-4503
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July 14	739	1(n)	66	594	260	3102
			66	627	113, 113 note	
July 28	253	4(b)	67	226	114 note	
		5	67	226	114	

1954	199	1	68	81	321	
May 11		2	68	81	322	
June 28	403	1	68	300	117	
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		1(2)	68	966	106 note	
1957	85-75	101 (last par. on p. 251)	71	251	6a	
1958	85-800	1	72	966	252	3102
Aug. 28		2, 3	72	966	252	3107
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		4 "Sec. 305(c)"	72	966	255	4503
		5	72	967	257	4701
		6	72	967	260	3102
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1960	86-624	28	74	419	10c	8301
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1962	87-638		76	437	254a	4708
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July 27		1	79	1034	351 note	
Oct. 22	89-286	2(a) (words before par. (1) related to applicability)	79	1034	351	6702
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1968 Mar. 16	90-268	612(c)	80	993	11	6301
		2	82	49	253	3301-3304
1969 Nov. 26	91-129	4	82	50	252	3107
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1971 June 23	92-28		83	269	251 note	
		1 "Sec. 1"	85	77		
		1 "Sec. 2(a)(1) (1st sentence words before 'hereafter')"	85	79	46	8502
		1 "Sec. 2(a)(1) (1st sentence words after 'a list')"	85	79	47	8503
		1 "Sec. 2(a)(1) (last sentence), (2), (b)-(c)"	85	80	47	8501
		1 "Sec. 3"	85	80	47	8503
		1 "Sec. 4"	85	80	48	8504
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		1 "Sec. 5"	85	81	48b	8501
		1 "Sec. 6"	85	82	48c	8506
		2	85	82	46 note	
		2	85	102	251 note	
1972 Oct. 9	92-473	1, 2	86	789	351	6703
		3	86	789	353	6707
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			86	790		

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July 6	93-57	2	87	140	357 note	
July 30	93-76		87	176	48c	8506
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July 25	93-358	3	88	390	6a-1	6102
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	93-400	4(10) ('supplies')			403	107
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