

**Law Revision Counsel**

- 1 Comparison of:
- 2 H.R. 5414 (109th Congress) (as reported by House Judiciary)
- 3 H.R. 4779 (110th Congress) (as introduced)
- 4
- 5 Deletions appear as Overstrike text
- 6 Additions appear as Bold-Underline text

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

## SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

Sec. 2. Purpose; conformity with original intent.

Sec. 3. Enactment of Title 41, United States Code.

Sec. 4. Conforming amendment.

Sec. 5. Conforming cross-references.

Sec. ~~6. Transitional~~ **6. Technical amendments.**

~~Sec. 7. Transitional~~ and savings provisions.

Sec. ~~8. Repeals~~ **7. Repeals.**

## SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.

(a) PURPOSE.—The purpose of this Act is to enact certain laws relating to public contracts as title 41, United States Code, “Public Contracts”.

(b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).

## SEC. 3. ENACTMENT OF TITLE 41, UNITED STATES CODE.

Certain general and permanent laws of the United States, related to public contracts, are revised, codified, and enacted as title 41, United States Code, “Public Contracts”, as follows:

## TITLE 41—PUBLIC CONTRACTS

ISubtitle

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FEDERAL PROCUREMENT POLICY

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- 3 6101
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2 CHAPTER 1—DEFINITIONS

3 SUBCHAPTER I—SUBTITLE DEFINITIONS

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1 SUBCHAPTER I—SUBTITLE DEFINITIONS

2 101.Administrator

3 In this subtitle, the term “Administrator” means the Administrator for Federal  
4 Procurement Policy appointed under section 1102 of this title.

5 102.Commercial component

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

8 103.Commercial item

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

- 10 (1) an item, other than real property, that—
- 11 (A) is of a type customarily used by the general public or by  
12 nongovernmental entities for purposes other than governmental purposes; and
- 13 (B) has been sold, leased, or licensed, or offered for sale, lease, or license, to  
14 the general public;
- 15 (2) an item that—
- 16 (A) evolved from an item described in paragraph (1) through advances in  
17 technology or performance; and
- 18 (B) is not yet available in the commercial marketplace but will be available  
19 in the commercial marketplace in time to satisfy the delivery requirements  
20 under a Federal Government solicitation;
- 21 (3) an item that would satisfy the criteria in paragraph (1) or (2) were it not for—
- 22 (A) modifications of a type customarily available in the commercial  
23 marketplace; or
- 24 (B) minor modifications made to meet Federal Government requirements;
- 25 (4) any combination of items meeting the requirements of paragraph (1), (2), (3),  
26 or (5) that are of a type customarily combined and sold in combination to the general  
27 public;
- 28 (5) installation services, maintenance services, repair services, training services,  
29 and other services if—
- 30 (A) those services are procured for support of an item referred to in  
31 paragraph (1), (2), (3), or (4), regardless of whether the services are provided  
32 by the same source or at the same time as the item; and
- 33 (B) the source of the services provides similar services contemporaneously to  
34 the general public under terms and conditions similar to those offered to the  
35 Federal Government;
- 36 (6) services offered and sold competitively, in substantial quantities, in the

1 commercial marketplace based on established catalog or market prices for specific  
2 tasks performed or specific outcomes to be achieved and under standard commercial  
3 terms and conditions;

4 (7) any item, combination of items, or service referred to in paragraphs (1) to (6)  
5 even though the item, combination of items, or service is transferred between or  
6 among separate divisions, subsidiaries, or affiliates of a contractor; or

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

## 11 104. Commercially available off-the-shelf item

12 In this subtitle, the term “commercially available off-the-shelf item”—

13 (1) means an item that—

14 (A) is a commercial item (as described in section 103(1) of this title);

15 (B) is sold in substantial quantities in the commercial marketplace; and

16 (C) is offered to the Federal Government, without modification, in the same  
17 form in which it is sold in the commercial marketplace; but

18 (2) does not include bulk cargo, as defined in section 3 of the Shipping Act of  
19 1984 (46 App. U.S.C. 1702), such as agricultural products and petroleum products.

## 20 105. Component

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

## 23 106. Federal Acquisition Regulation

24 In this subtitle, the term “Federal Acquisition Regulation” means the regulation issued  
25 under section 1303(a)(1) of this title.

## 26 107. Full and open competition

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

## 30 108. Item and item of supply

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

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

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

1 **109. Major system**

2 (a) IN GENERAL.—In this subtitle, the term “major system” means a combination of  
3 elements that will function together to produce the capabilities required to fulfill a  
4 mission need. These elements may include hardware, equipment, software, or a  
5 combination of hardware, equipment, and software, but do not include construction or  
6 other improvements to real property.

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

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

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

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

21 **110. 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 department or agency  
25 of the Federal Government, a State or local government, or a foreign government  
26 with which the United States has a mutual defense cooperation agreement;

27 (3) an item of supply described in paragraph (1) or (2) that requires only minor  
28 modification or modification of the type customarily available in the commercial  
29 marketplace to meet the requirements of the procuring department or agency; or

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

32 **111. Procurement**

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

36 **112. Procurement system**

37 In this subtitle, the term “procurement system” means the integration of the  
38 procurement process, the professional development of procurement personnel, and the

1 management structure for carrying out the procurement function.

## 2 113. Responsible source

3 In this subtitle, the term “responsible source” means a prospective contractor that—

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

6 (2) is able to comply with the required or proposed delivery or performance  
7 schedule, taking into consideration all existing commercial and Government  
8 business commitments;

9 (3) has a satisfactory performance record;

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

11 (5) has the necessary organization, experience, accounting and operational  
12 controls, and technical skills, or the ability to obtain the organization, experience,  
13 controls, and skills;

14 (6) has the necessary production, construction, and technical equipment and  
15 facilities, or the ability to obtain the equipment and facilities; and

16 (7) is otherwise qualified and eligible to receive an award under applicable laws  
17 and regulations.

## 18 114. Standards

19 In this subtitle, the term “standards” means the criteria for determining the  
20 effectiveness of the procurement system by measuring the performance of the various  
21 elements of the system.

## 22 115. Supplies

23 In this subtitle, the term “supplies”—

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

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

## 29 116. Technical data

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

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

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

1 SUBCHAPTER ~~II~~—PART II—DIVISION B  
2 DEFINITIONS

3 131.Acquisition

4 In ~~part~~ division B, the term “acquisition”—

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

10 (2) includes—

11 (A) the process of acquiring property or services that are already in  
12 existence, or that must be created, developed, demonstrated, and evaluated;

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

14 (C) solicitation and selection of sources;

15 (D) award of contracts;

16 (E) contract performance;

17 (F) contract financing;

18 (G) management and measurement of contract performance through final  
19 delivery and payment; and

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

22 132.Competitive procedures

23 In ~~part~~ division B, the term “competitive procedures” means procedures under which  
24 an agency enters into a contract pursuant to full and open competition.

25 133.Executive agency

26 In ~~part~~ division B, the term “executive agency” means—

27 (1) an executive department specified in section 101 of title 5;

28 (2) a military department specified in section 102 of title 5;

29 (3) an independent establishment as defined in section 104(1) of title 5; and

30 (4) a wholly owned Government corporation fully subject to chapter 91 of title 31.

31 134.Simplified acquisition threshold

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

33 SUBCHAPTER ~~III~~—PART III—DIVISION C

1     **DEFINITIONS**

2     **151. Agency head**

3         In ~~part~~ **division** C, the term “agency head” means the head or any assistant head of an  
4 executive agency, and may at the option of the Administrator of General Services include  
5 the chief official of any principal organizational unit of the General Services  
6 Administration.

7     **152. Competitive procedures**

8         In ~~part~~ **division** C, the term “competitive procedures” means procedures under which  
9 an executive agency enters into a contract pursuant to full and open competition. The  
10 term also includes—

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

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

16             (3) the procedures established by the Administrator of General Services for the  
17 multiple awards schedule program of the General Services Administration if—

18                 (A) participation in the program has been open to all responsible sources;  
19                 and

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

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

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

28     **153. Simplified acquisition threshold**

29             (1) **IN GENERAL.**—In ~~part~~ **division** C, the term “simplified acquisition threshold” has  
30 the meaning provided that term in section 134 of this title, except that, in the case of a  
31 contract to be awarded and performed, or purchase to be made, outside the United States  
32 in support of a contingency operation or a humanitarian or peacekeeping operation, the  
33 term means an amount equal to two times the amount specified for that term in section  
34 134 of this title.

35             (2) **SPECIFIC DEFINITIONS RELATING TO SIMPLIFIED ACQUISITION THRESHOLD.**—In  
36 paragraph (1)—

37                 (A) **CONTINGENCY OPERATION.**—The term “contingency operation” has the  
38 meaning given that term in section 101(a) of title 10.

1 (B) HUMANITARIAN OR PEACEKEEPING OPERATION.—The term “humanitarian or  
2 peacekeeping operation” means a military operation in support of the provision of  
3 humanitarian or foreign disaster assistance or in support of a peacekeeping operation  
4 under chapter VI or VII of the Charter of the United Nations. The term does not  
5 include routine training, force rotation, or stationing.

6 **Part Division B—Office of Federal Procurement Policy**

7 **CHAPTER 11—ESTABLISHMENT OF OFFICE AND**  
8 **AUTHORITY AND FUNCTIONS OF**  
9 **ADMINISTRATOR**

10 **SUBCHAPTER I—GENERAL**

11 Sec.

12 1101.Office of Federal Procurement Policy.

13 1102.Administrator.

14 **SUBCHAPTER II—AUTHORITY AND FUNCTIONS**  
15 **OF THE ADMINISTRATOR**

16 1121.General authority.

17 1122.Functions.

18 1123.Small business concerns.

19 1124.Tests of innovative procurement methods and procedures.

20 1125.Recipients of Federal grants or assistance.

21 1126.Policy regarding consideration of contractor past performance.

22 1127.Determining benchmark compensation amount.

23 1128.Maintaining necessary capability with respect to acquisition of architectural and  
24 engineering services.

25 1129.Center of excellence in contracting for services.

26 1130.Effect of ~~part~~ **division** on other law.

27 1131.Annual report.

28 **SUBCHAPTER I—GENERAL**

29 **1101.Office of Federal Procurement Policy**

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

32 (b) PURPOSES.—The purposes of the Office of Federal Procurement Policy are to—

1 (1) provide overall direction of Government-wide procurement policies,  
2 regulations, procedures, and forms for executive agencies; and

3 (2) promote economy, efficiency, and effectiveness in the procurement of  
4 property and services by the executive branch of the Federal Government.

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

## 8 1102.Administrator

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

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

## 13 SUBCHAPTER II—AUTHORITY AND FUNCTIONS 14 OF THE ADMINISTRATOR

### 15 1121.General authority

16 (a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator shall provide overall  
17 direction of procurement policy and leadership in the development of procurement  
18 systems of the executive agencies.

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

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

26 (1) AREAS OF PROCUREMENT FOR WHICH POLICIES ARE TO BE FOLLOWED.—The  
27 policies implemented in the Federal Acquisition Regulation shall be followed by  
28 executive agencies in the procurement of—

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

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

31 (C) construction, alteration, repair, or maintenance of real property.

32 (2) PROCEDURES TO ENSURE COMPLIANCE.—The Administrator shall establish  
33 procedures to ensure compliance with the Federal Acquisition Regulation by all  
34 executive agencies.

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

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

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

18 (f) LIMITATION ON AUTHORITY.—The authority of the Administrator under this ~~part~~  
19 **division** shall not be construed to—

20 (1) impair or interfere with the determination by executive agencies of their need  
21 for, or their use of, specific property, services, or construction, including particular  
22 specifications for the property, services, or construction; or

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

## 25 1122.Functions

26 (a) IN GENERAL.—The functions of the Administrator include—

27 (1) providing leadership and ensuring action by the executive agencies in  
28 establishing, developing, and maintaining the single system of simplified  
29 Government-wide procurement regulations and resolving differences among the  
30 executive agencies in developing simplified Government-wide procurement  
31 regulations, procedures, and forms;

32 (2) coordinating the development of Government-wide procurement system  
33 standards that executive agencies shall implement in their procurement systems;

34 (3) providing leadership and coordination in formulating the executive branch  
35 position on legislation relating to procurement;

36 (4)(A) providing for and directing the activities of the computer-based Federal  
37 Procurement Data System (including recommending to the Administrator of General  
38 Services a sufficient budget for those activities), which shall be located in the  
39 General Services Administration, in order to adequately collect, develop, and  
40 disseminate procurement data; and

41 (B) ensuring executive agency compliance with the record requirements of section

1 1710 of this title;

2 (5) providing for and directing the activities of the Federal Acquisition Institute  
3 (including recommending to the Administrator of General Services a sufficient  
4 budget for those activities), which shall be located in the General Services  
5 Administration, in order to—

6 (A) foster and promote the development of a professional acquisition  
7 workforce Government-wide;

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

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

14 (D) periodically analyze acquisition career fields to identify critical  
15 competencies, duties, tasks, and related academic prerequisites, skills, and  
16 knowledge;

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

19 (F) develop instructional materials for acquisition personnel in coordination  
20 with private and public acquisition colleges and training facilities;

21 (G) evaluate the effectiveness of training and career development programs  
22 for acquisition personnel;

23 (H) promote the establishment and utilization of academic programs by  
24 colleges and universities in acquisition fields;

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

27 (J) perform other career management or research functions as directed by the  
28 Administrator;

29 (6) administering section 1703(a) to (i) of this title;

30 (7) establishing criteria and procedures to ensure the effective and timely  
31 solicitation of the viewpoints of interested parties in the development of  
32 procurement policies, regulations, procedures, and forms;

33 (8) developing standard contract forms and contract language in order to reduce  
34 the Federal Government's cost of procuring property and services and the private  
35 sector's cost of doing business with the Federal Government;

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

38 (10) providing for a Government-wide award to recognize and promote  
39 excellence in officers and employees of the Federal Government serving in  
40 procurement-related positions;

1 (11) developing policies, in consultation with the Administrator of the Small  
2 Business Administration, that ensure that small businesses, qualified HUBZone  
3 small business concerns (as defined in section 3(p) of the Small Business Act (15  
4 U.S.C. 632(p))), small businesses owned and controlled by socially and  
5 economically disadvantaged individuals, and small businesses owned and controlled  
6 by women are provided with the maximum practicable opportunities to participate in  
7 procurements that are conducted for amounts below the simplified acquisition  
8 threshold;

9 (12) developing policies that will promote achievement of goals for participation  
10 by small businesses, small business concerns owned and controlled by service-  
11 disabled veterans, qualified HUBZone small business concerns (as defined in  
12 section 3(p) of the Small Business Act (15 U.S.C. 632(p))), small businesses owned  
13 and controlled by socially and economically disadvantaged individuals, and small  
14 businesses owned and controlled by women; and

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

17 (b) CONSULTATION AND ASSISTANCE.—In carrying out the functions in subsection (a),  
18 the Administrator—

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

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

24 (3) may establish advisory committees or other interagency groups to assist in  
25 providing for the establishment, development, and maintenance of a single system of  
26 simplified Government-wide procurement regulations and to assist in performing  
27 any other function the Administrator considers appropriate.

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

29 (1) TO ADMINISTRATOR.—Except as otherwise provided by law, only duties,  
30 functions, or responsibilities expressly assigned by this ~~part~~ **division** shall be  
31 assigned, delegated, or transferred to the Administrator.

32 (2) BY ADMINISTRATOR.—

33 (A) WITHIN OFFICE.—The Administrator may make and authorize  
34 delegations within the Office of Federal Procurement Policy that the  
35 Administrator determines to be necessary to carry out this ~~part~~ **division**.

36 (B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator may delegate,  
37 and authorize successive redelegations of, an authority, function, or power of  
38 the Administrator under this ~~part~~ **division** (other than the authority to provide  
39 overall direction of Federal procurement policy and to prescribe policies and  
40 regulations to carry out the policy) to another executive agency with the  
41 consent of the head of the executive agency or at the direction of the President.

1 **1123.Small business concerns**

2 In formulating the Federal Acquisition Regulation and procedures to ensure  
3 compliance with the Regulation, the Administrator, in consultation with the Small  
4 Business Administration, shall—

5 (1) conduct analyses of the impact on small business concerns resulting from  
6 revised procurement regulations; and

7 (2) incorporate into revised procurement regulations simplified bidding, contract  
8 performance, and contract administration procedures for small business concerns.

9 **1124.Tests of innovative procurement methods and**  
10 **procedures**

11 (a) IN GENERAL.—The Administrator may develop innovative procurement methods  
12 and procedures to be tested by selected executive agencies. In developing a program to  
13 test innovative procurement methods and procedures under this subsection, the  
14 Administrator shall consult with the heads of executive agencies to—

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

16 (2) develop the guidelines and procedures for carrying out the program and the  
17 criteria to be used in measuring the success of the program;

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

20 (4) select the appropriate executive agencies or components of executive agencies  
21 to carry out the program;

22 (5) specify the categories and types of products or services to be procured under  
23 the program; and

24 (6) develop the methods to be used to analyze the results of the program.

25 (b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test innovative  
26 procurement methods and procedures may not be carried out unless approved by the  
27 heads of the executive agencies selected to carry out the program.

28 (c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines that it is  
29 necessary to waive the application of a provision of law to carry out a proposed program  
30 to test innovative procurement methods and procedures under subsection (a), the  
31 Administrator shall transmit notice of the proposed program to the Committee on  
32 **Oversight and** Government Reform of the House of Representatives and the Committee  
33 **on Homeland Security and Governmental Affairs** of the Senate and request that the  
34 Committees take the necessary action to provide that the provision of law does not apply  
35 with respect to the proposed program. The notification to Congress shall include—

36 (1) a description of the proposed program (including the scope and purpose of the  
37 proposed program);

38 (2) the procedures to be followed in carrying out the proposed program;

1 (3) the provisions of law affected and the application of any provision of law that  
2 must be waived in order to carry out the proposed program; and

3 (4) the executive agencies involved in carrying out the proposed program.

## 4 1125. Recipients of Federal grants or assistance

5 (a) AUTHORITY.—With due regard to applicable laws and the program activities of the  
6 executive agencies administering Federal programs of grants or assistance, the  
7 Administrator may prescribe Government-wide policies, regulations, procedures, and  
8 forms that the Administrator considers appropriate and that executive agencies shall  
9 follow in providing for the procurement, to the extent required under those programs, of  
10 property or services referred to in section 1121(c)(1) of this title by recipients of Federal  
11 grants or assistance under the programs.

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

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

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

## 17 1126. Policy regarding consideration of contractor past 18 performance

19 (a) GUIDANCE.—The Administrator shall prescribe for executive agencies guidance  
20 regarding consideration of the past contract performance of offerors in awarding  
21 contracts. The guidance shall include—

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

26 (2) policies for the collection and maintenance of information on past contract  
27 performance that, to the maximum extent practicable, facilitate automated  
28 collection, maintenance, and dissemination of information and provide for ease of  
29 collection, maintenance, and dissemination of information by other methods, as  
30 necessary;

31 (3) policies for ensuring that—

32 (A) offerors are afforded an opportunity to submit relevant information on  
33 past contract performance, including performance under contracts entered into  
34 by the executive agency concerned, other departments and agencies of the  
35 Federal Government, agencies of State and local governments, and commercial  
36 customers; and

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

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

1 (b) INFORMATION NOT AVAILABLE.—If there is no information on past contract  
2 performance of an offeror or the information on past contract performance is not  
3 available, the offeror may not be evaluated favorably or unfavorably on the factor of past  
4 contract performance.

## 5 1127.Determining benchmark compensation amount

6 (a) DEFINITIONS.—In this section:

7 (1) BENCHMARK COMPENSATION AMOUNT.—The term “benchmark compensation  
8 amount”, for a fiscal year, is the median amount of the compensation provided for  
9 all senior executives of all benchmark corporations for the most recent year for  
10 which data is available at the time the determination under subsection (b) is made.

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

14 (3) COMPENSATION.—The term “compensation”, for a fiscal year, means the total  
15 amount of wages, salary, bonuses, and deferred compensation for the fiscal year,  
16 whether paid, earned, or otherwise accruing, as recorded in an employer’s cost  
17 accounting records for the fiscal year.

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

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

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

24 (B) whose voting stock is publicly traded.

25 (6) SENIOR EXECUTIVES.—The term “senior executives”, with respect to a  
26 contractor, means the 5 most highly compensated employees in management  
27 positions at each home office and each segment of the contractor.

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

## 35 1128.Maintaining necessary capability with respect to 36 acquisition of architectural and engineering services

37 The Administrator, in consultation with the Secretary of Defense, the Administrator of  
38 General Services, and the Director of the Office of Personnel Management, shall develop  
39 and implement a plan to ensure that the Federal Government maintains the necessary

1 capability with respect to the acquisition of architectural and engineering services to—

2 (1) ensure that Federal Government employees have the expertise to determine  
3 agency requirements for those services;

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

5 (3) establish professional standards;

6 (4) develop scopes of work; and

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

## 8 1129.Center of excellence in contracting for services

9 The Administrator shall maintain a center of excellence in contracting for services. The  
10 center shall assist the acquisition community by identifying, and serving as a  
11 clearinghouse for, best practices in contracting for services in the public and private  
12 sectors.

## 13 1130.Effect of ~~part~~ **division** on other law

14 This ~~part~~ **division** does not impair or affect the authorities or responsibilities relating to  
15 the procurement of real property conferred by ~~part~~ **division** C of this subtitle and chapters  
16 1 to 11 of title 40.

## 17 1131.Annual report

18 The Administrator annually shall submit to Congress an assessment of the progress  
19 made in executive agencies in implementing the policy regarding major acquisitions that  
20 is stated in section 3103(a) of this title. The Administrator shall use data from existing  
21 management systems in making the assessment.

# 22 CHAPTER 13—ACQUISITION COUNCILS

## 23 SUBCHAPTER I—FEDERAL ACQUISITION 24 REGULATORY COUNCIL

25 Sec.

26 1301.Definition.

27 1302.Establishment and membership.

28 1303.Functions and authority.

29 1304.Contract clauses and certifications.

## 30 SUBCHAPTER II—CHIEF ACQUISITION OFFICERS 31 COUNCIL

32 1311.Establishment and membership.

33 1312.Functions.

# SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

## 1301. Definition

In this subchapter, the term “Council” means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

## 1302. Establishment and membership

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

(b) MEMBERSHIP.—

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

(A) the Administrator;

(B) the Secretary of Defense;

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

(D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

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

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

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

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

## 1303. Functions and authority

(a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2304 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under

1 **part division** C of this subtitle, chapters 4 and 137 of title 10, and the National  
2 Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and  
3 maintain in accordance with subsection (d) a single Government-wide procurement  
4 regulation, to be known as the Federal Acquisition Regulation.

5 (2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to  
6 procurement issued by an executive agency shall be limited to—

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

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

11 (3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with  
12 the Council, shall ensure that procurement regulations prescribed by executive  
13 agencies are consistent with the Federal Acquisition Regulation and in accordance  
14 with the policies prescribed pursuant to section 1121(b) of this title.

15 (4) REQUEST TO REVIEW REGULATION.—

16 (A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a  
17 person may request the Administrator to review a regulation relating to  
18 procurement on the basis that the regulation is inconsistent with the Federal  
19 Acquisition Regulation.

20 (B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its  
21 face, state a valid basis for the review, the Administrator shall complete the  
22 review not later than 60 days after receiving the request. The time for  
23 completion of the review may be extended if the Administrator determines that  
24 an additional period of review is required. The Administrator shall advise the  
25 requester of the reasons for the extension and the date by which the review will  
26 be completed.

27 (5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the  
28 Administrator determines that a regulation relating to procurement is inconsistent  
29 with the Federal Acquisition Regulation or that the regulation otherwise should be  
30 revised to remove an inconsistency with the policies prescribed under section  
31 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the  
32 regulation or take other action authorized under sections 1121, 1122(a) to (c)(1),  
33 1125, 1126, 1130, 1131, and 2304 of this title as may be necessary to remove the  
34 inconsistency. If the Administrator determines that the regulation, although not  
35 inconsistent with the Federal Acquisition Regulation or those policies, should be  
36 revised to improve compliance with the Regulation or policies, the Administrator  
37 shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126,  
38 1130, 1131, and 2304 as may be necessary and appropriate.

39 (6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the  
40 Administrator shall be in writing and made publicly available.

41 (b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

42 (1) IN GENERAL.—Subject to the authority, direction, and control of the head of

1 the agency concerned, each official who represents an agency on the Council  
2 pursuant to section 1302(b) of this title shall—

3 (A) approve or disapprove all regulations relating to procurement that are  
4 proposed for public comment, prescribed in final form, or otherwise made  
5 effective by that agency before the regulation may be prescribed in final form,  
6 or otherwise made effective, except that the official may grant an interim  
7 approval, without review, for not more than 60 days for a procurement  
8 regulation in urgent and compelling circumstances;

9 (B) carry out the responsibilities of that agency set forth in chapter 35 of title  
10 44 for each information collection request that relates to procurement rules or  
11 regulations; and

12 (C) eliminate or reduce—

13 (i) any redundant or unnecessary levels of review and approval in the  
14 procurement system of that agency; and

15 (ii) redundant or unnecessary procurement regulations which are unique  
16 to that agency.

17 (2) LIMITATION ON DELEGATION.—The authority to review and approve or  
18 disapprove regulations under paragraph (1)(A) may not be delegated to an individual  
19 outside the office of the official who represents the agency on the Council pursuant  
20 to section 1302(b) of this title.

21 (c) GOVERNING POLICIES.—All actions of the Council and of members of the Council  
22 shall be in accordance with and furtherance of the policies prescribed under section  
23 1121(b) of this title.

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

## 28 1304. Contract clauses and certifications

29 (a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council  
30 shall prescribe regulations to discourage the use of a nonstandard contract clause on a  
31 repetitive basis. The regulations shall include provisions that—

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

34 (2) require prior approval for the use of a nonstandard clause on a repetitive basis  
35 by an official at a level of responsibility above the contracting officer.

36 (b) WHEN CERTIFICATION REQUIRED.—

37 (1) BY LAW.—A provision of law may not be construed as requiring a  
38 certification by a contractor or offeror in a procurement made or to be made by the  
39 Federal Government unless that provision of law specifically provides that such a  
40 certification shall be required.

1 (2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a  
2 contractor or offeror may not be included in the Federal Acquisition Regulation  
3 unless—

4 (A) the certification requirement is specifically imposed by statute; or

5 (B) written justification for the certification requirement is provided to the  
6 Administrator by the Council and the Administrator approves in writing the  
7 inclusion of the certification requirement.

8 (3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

9 (A) DEFINITION.—In subparagraph (B), the term “head of the executive  
10 agency” with respect to a military department means the Secretary of Defense.

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

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

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

## 19 SUBCHAPTER II—CHIEF ACQUISITION OFFICERS 20 COUNCIL

### 21 1311.Establishment and membership

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

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

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

27 (2) the Administrator;

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

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

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

36 (c) LEADERSHIP AND SUPPORT.—

37 (1) CHAIRMAN.—The Deputy Director for Management of the Office of

1 Management and Budget is the Chairman of the Council.

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

5 (3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the  
6 Council on behalf of the Deputy Director for Management.

7 (4) SUPPORT.—The Administrator of 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 principal  
11 interagency forum for monitoring and improving the Federal acquisition system.

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

13 (1) Develop recommendations for the Director of the Office of Management and  
14 Budget on Federal acquisition policies and requirements.

15 (2) Share experiences, ideas, best practices, and innovative approaches related to  
16 Federal acquisition.

17 (3) Assist the Administrator in the identification, development, and coordination  
18 of multiagency projects and other innovative initiatives to improve Federal  
19 acquisition.

20 (4) Promote effective business practices that ensure the timely delivery of best  
21 value products to the Federal Government and achieve appropriate public policy  
22 objectives.

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

25 (6) Work with the Office of Personnel Management to assess and address the  
26 hiring, training, and professional development needs of the Federal Government  
27 related to acquisition.

28 (7) Work with the Administrator and the Federal Acquisition Regulatory Council  
29 to promote the business practices referred to in paragraph (4) and other results of the  
30 functions carried out under this subsection.

## 31 CHAPTER 15—COST ACCOUNTING STANDARDS

32 Sec.

33 1501.Cost Accounting Standards Board.

34 1502.Cost accounting standards.

35 1503.Contract price adjustment.

36 1504.Effect on other standards and regulations.

37 1505.Examinations.

1 1506. Authorization of appropriations.

## 2 1501. Cost Accounting Standards Board

3 (a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board  
4 in the Office of Federal Procurement Policy.

5 (b) MEMBERSHIP.—

6 (1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of  
7 5 members. One member is the Administrator, who serves as Chairman. The other 4  
8 members, all of whom shall have experience in Federal Government contract cost  
9 accounting, are as follows:

10 (A) 2 representatives of the Federal Government—

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

13 (ii) one of whom is an officer or employee of the General Services  
14 Administration appointed by the Administrator of General Services.

15 (B) 2 individuals from the private sector, each of whom is appointed by the  
16 Administrator, and—

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

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

20 (2) TERM OF OFFICE.—

21 (A) LENGTH OF TERM.—The term of office of each member, other than the  
22 Administrator, is 4 years. The terms are staggered, with the terms of 2 members  
23 expiring in the same year, the term of another member expiring the next year,  
24 and the term of the last member expiring the year after that.

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

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

33 (c) SENIOR STAFF.—The Administrator, after consultation with the Board, may—

34 (1) appoint an executive secretary and 2 additional staff members without regard  
35 to the provisions of title 5 governing appointments in the competitive service; and

36 (2) pay those employees without regard to the provisions of chapter 51 and  
37 subchapter III of chapter 53 of title 5 relating to classification and General Schedule  
38 pay rates, except that those employees may not receive pay in excess of the  
39 maximum rate of basic pay payable under section 5376 of title 5.

1 (d) OTHER STAFF.—The Administrator may appoint, fix the compensation of, and  
2 remove additional employees of the Board under the applicable provisions of title 5.

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

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

7 (2) the Administrator, after consultation with the Board, may procure temporary  
8 and intermittent services of personnel under section 3109(b) of title 5.

9 (f) COMPENSATION.—

10 (1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who  
11 are officers or employees of the Federal Government, and officers and employees of  
12 other agencies of the Federal Government who are used under subsection (e)(1),  
13 shall not receive additional compensation for services but shall continue to be  
14 compensated by the employing department or agency of the officer or employee.

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

20 (3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual hired under  
21 subsection (e)(2) may receive compensation at a rate fixed by the Administrator, but  
22 not to exceed the daily equivalent of the rate for level V of the Executive Schedule  
23 for each day (including travel time) in which the individual is properly engaged in  
24 the actual performance of duties under this chapter.

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

## 29 1502. Cost accounting standards

30 (a) AUTHORITY.—

31 (1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards  
32 Board has exclusive authority to prescribe, amend, and rescind cost accounting  
33 standards, and interpretations of the standards, designed to achieve uniformity in the  
34 cost accounting standards governing measurement, assignment, and allocation of  
35 costs to contracts with the Federal Government.

36 (2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator,  
37 after consultation with the Board, shall prescribe rules and procedures governing  
38 actions of the Board under this chapter. The rules and procedures shall require that  
39 any action to prescribe, amend, or rescind a standard or interpretation be approved  
40 by majority vote of the Board.

1 (b) MANDATORY USE OF STANDARDS.—

2 (1) SUBCONTRACT.—

3 (A) DEFINITION.—In this paragraph, the term “subcontract” includes a  
4 transfer of commercial items between divisions, subsidiaries, or affiliates of a  
5 contractor or subcontractor.

6 (B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards  
7 prescribed under this chapter are mandatory for use by all executive agencies  
8 and by contractors and subcontractors in estimating, accumulating, and  
9 reporting costs in connection with the pricing and administration of, and  
10 settlement of disputes concerning, all negotiated prime contract and subcontract  
11 procurements with the Federal Government in excess of the amount set forth in  
12 section 2306a(a)(1)(A)(i) of title 10 as the amount is adjusted in accordance  
13 with applicable requirements of law.

14 (C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply  
15 to—

16 (i) a contract or subcontract for the acquisition of a commercial item;

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

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

22 (iv) a contract or subcontract with a value of less than \$7,500,000 if,  
23 when the contract or subcontract is entered into, the segment of the  
24 contractor or subcontractor that will perform the work has not been  
25 awarded at least one contract or subcontract with a value of more than  
26 \$7,500,000 that is covered by the standards.

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

28 (A) exempt classes of contractors and subcontractors from the requirements  
29 of this chapter; and

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

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

33 (A) IN GENERAL.—The head of an executive agency may waive the  
34 applicability of the cost accounting standards for a contract or subcontract with  
35 a value of less than \$15,000,000 if that official determines in writing that the  
36 segment of the contractor or subcontractor that will perform the work—

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

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

40 (B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency

1           may waive the applicability of the cost accounting standards for a contract or  
2           subcontract under exceptional circumstances when necessary to meet the needs  
3           of the agency. A determination to waive the applicability of the standards under  
4           this subparagraph shall be set forth in writing and shall include a statement of  
5           the circumstances justifying the waiver.

6           (C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive  
7           agency may not delegate the authority under subparagraph (A) or (B) to an  
8           official in the executive agency below the senior policymaking level in the  
9           executive agency.

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

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

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

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

18          (c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—  
19          Before prescribing cost accounting standards and interpretations, the Board shall—

20                 (1) take into account, after consultation and discussions with the Comptroller  
21                 General, professional accounting organizations, contractors, and other interested  
22                 parties—

23                         (A) the probable costs of implementation, including any inflationary effects,  
24                         compared to the probable benefits;

25                         (B) the advantages, disadvantages, and improvements anticipated in the  
26                         pricing and administration of, and settlement of disputes concerning, contracts;  
27                         and

28                         (C) the scope of, and alternatives available to, the action proposed to be  
29                         taken;

30                 (2) prepare and publish a report in the Federal Register on the issues reviewed  
31                 under paragraph (1);

32                 (3)(A) publish an advanced notice of proposed rulemaking in the Federal Register  
33                 to solicit comments on the report prepared under paragraph (2);

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

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

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

1 (d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and  
2 modifications thereof prescribed or amended under this chapter shall have the full force  
3 and effect of law, and shall become effective within 120 days after publication in the  
4 Federal Register in final form, unless the Board determines that a longer period is  
5 necessary. The Board shall determine implementation dates for contractors and  
6 subcontractors. The dates may not be later than the beginning of the second fiscal year of  
7 the contractor or subcontractor after the standard becomes effective.

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

11 (f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regulations for the  
12 implementation of cost accounting standards prescribed or interpreted under this section.  
13 The regulations shall be incorporated into the Federal Acquisition Regulation and shall  
14 require contractors and subcontractors as a condition of contracting with the Federal  
15 Government to—

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

19 (2) agree to a contract price adjustment, with interest, for any increased costs the  
20 Federal Government pays the contractor or subcontractor because of a change in the  
21 contractor's or subcontractor's cost accounting practices or a failure by the  
22 contractor or subcontractor to comply with applicable cost accounting standards.

23 (g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions exercised under  
24 this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

## 25 1503.Contract price adjustment

26 (a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a  
27 contractor or subcontractor fail to agree on a contract price adjustment, including whether  
28 the contractor or subcontractor has complied with the applicable cost accounting  
29 standards, the disagreement will constitute a dispute under chapter 69 of this title.

30 (b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under section  
31 1502(f)(2) of this title shall be made, where applicable, on relevant contracts between the  
32 Federal Government and the contractor that are subject to the cost accounting standards  
33 so as to protect the Federal Government from payment, in the aggregate, of increased  
34 costs, as defined by the Cost Accounting Standards Board. The Federal Government may  
35 not recover costs greater than the aggregate increased cost to the Federal Government on  
36 the relevant contracts subject to the price adjustment unless the contractor made a change  
37 in its cost accounting practices of which it was aware or should have been aware at the  
38 time of the price negotiation and which it failed to disclose to the Federal Government.

39 (c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual  
40 rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26  
41 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased  
42 costs were made to the contractor or subcontractor to the time the Federal Government

1 receives full compensation for the price adjustment.

## 2 1504. Effect on other standards and regulations

3 (a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers,  
4 exemptions, interpretations, modifications, rules, and regulations prescribed by the Cost  
5 Accounting Standards Board under section 719 of the Defense Production Act of 1950  
6 (50 App. U.S.C. 2168)—

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

9 (2) are subject to the provisions of this ~~part~~ **division** in the same manner as if  
10 prescribed by the Board under this ~~part~~ **division**.

11 (b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation or proposed  
12 regulation of an executive agency is not inconsistent with a cost accounting standard  
13 prescribed or amended under this chapter, the Administrator, under the authority in  
14 sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2304 of this title, shall  
15 rescind or deny the promulgation of the inconsistent regulation or proposed regulation  
16 and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125,  
17 1126, 1130, 1131, and 2304.

18 (c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are the subject of cost  
19 accounting standards prescribed under this chapter are not subject to regulations  
20 established by another executive agency that differ from those standards with respect to  
21 the measurement, assignment, and allocation of those costs.

## 22 1505. Examinations

23 To determine whether a contractor or subcontractor has complied with cost accounting  
24 standards prescribed under this chapter and has followed consistently the contractor's or  
25 subcontractor's disclosed cost accounting practices, an authorized representative of the  
26 head of the agency concerned, of the offices of inspector general established under the  
27 Inspector General Act of 1978 (5 App. U.S.C.), or of the Comptroller General shall have  
28 the right to examine and copy documents, papers, or records of the contractor or  
29 subcontractor relating to compliance with the standards.

## 30 1506. Authorization of appropriations

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

## 32 CHAPTER 17—AGENCY RESPONSIBILITIES AND 33 PROCEDURES

34 Sec.

35 1701. Cooperation with the Administrator.

36 1702. Chief Acquisition Officers and senior procurement executives.

37 1703. Acquisition workforce.

- 1 1704. Advocates for competition.
- 2 1705. Personnel evaluation.
- 3 1706. Publication of proposed regulations.
- 4 1707. Procurement notice.
- 5 1708. Contracting functions performed by Federal personnel.
- 6 1709. Value engineering.
- 7 1710. Record requirements.
- 8 1711. Procurement data.

## 9 1701. Cooperation with the Administrator

10 On the request of the Administrator, each executive agency shall—

11 (1) make its services, personnel, and facilities available to the Office of Federal  
12 Procurement Policy to the greatest practicable extent for the performance of  
13 functions under this ~~part~~ **division**; and

14 (2) except when prohibited by law, furnish to the Administrator, and give the  
15 Administrator access to, all information and records in its possession that the  
16 Administrator may determine to be necessary for the performance of the functions of  
17 the Office.

## 18 1702. Chief Acquisition Officers and senior procurement 19 executives

20 (a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—The head of  
21 each executive agency described in section 901(b)(1) (other than the Department of  
22 Defense) or 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or  
23 designated under section 901(a) of title 31 shall appoint or designate a non-career  
24 employee as Chief Acquisition Officer for the agency.

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

26 (1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Officer is  
27 acquisition management.

28 (2) ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall advise and  
29 assist the head of the executive agency and other agency officials to ensure that the  
30 mission of the executive agency is achieved through the management of the  
31 agency's acquisition activities.

32 (3) OTHER FUNCTIONS.—The functions of each Chief Acquisition Officer  
33 include—

34 (A) monitoring the performance of acquisition activities and acquisition  
35 programs of the executive agency, evaluating the performance of those  
36 programs on the basis of applicable performance measurements, and advising  
37 the head of the executive agency regarding the appropriate business strategy to

1 achieve the mission of the executive agency;

2 (B) increasing the use of full and open competition in the acquisition of  
3 property and services by the executive agency by establishing policies,  
4 procedures, and practices that ensure that the executive agency receives a  
5 sufficient number of sealed bids or competitive proposals from responsible  
6 sources to fulfill the Federal Government's requirements (including  
7 performance and delivery schedules) at the lowest cost or best value  
8 considering the nature of the property or service procured;

9 (C) increasing appropriate use of performance-based contracting and  
10 performance specifications;

11 (D) making acquisition decisions consistent with all applicable laws and  
12 establishing clear lines of authority, accountability, and responsibility for  
13 acquisition decisionmaking within the executive agency;

14 (E) managing the direction of acquisition policy for the executive agency,  
15 including implementation of the unique acquisition policies, regulations, and  
16 standards of the executive agency;

17 (F) developing and maintaining an acquisition career management program  
18 in the executive agency to ensure that there is an adequate professional  
19 workforce; and

20 (G) as part of the strategic planning and performance evaluation process  
21 required under section 306 of title 5 and sections 1105(a)(28), 1115, 1116, and  
22 9703 (**added by section 5(a) of Public Law 103-62 (107 Stat. 289)**) of title  
23 31—

24 (i) assessing the requirements established for agency personnel  
25 regarding knowledge and skill in acquisition resources management and  
26 the adequacy of those requirements for facilitating the achievement of the  
27 performance goals established for acquisition management;

28 (ii) developing strategies and specific plans for hiring, training, and  
29 professional development to rectify a deficiency in meeting those  
30 requirements; and

31 (iii) reporting to the head of the executive agency on the progress made  
32 in improving acquisition management capability.

33 (c) SENIOR PROCUREMENT EXECUTIVE.—

34 (1) DESIGNATION.—The head of each executive agency shall designate a senior  
35 procurement executive.

36 (2) RESPONSIBILITY.—The senior procurement executive is responsible for  
37 management direction of the procurement system of the executive agency, including  
38 implementation of the unique procurement policies, regulations, and standards of the  
39 executive agency.

40 (3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DESIGNATED.—For an  
41 executive agency for which a Chief Acquisition Officer has been appointed or

1 designated under subsection (a), the head of the executive agency shall—

2 (A) designate the Chief Acquisition Officer as the senior procurement  
3 executive for the executive agency; or

4 (B) ensure that the senior procurement executive designated under paragraph  
5 (1) reports directly to the Chief Acquisition Officer without intervening  
6 authority.

## 7 1703.Acquisition workforce

8 (a) DESCRIPTION.—For purposes of this section, the acquisition workforce of an  
9 agency consists of all employees serving in acquisition positions listed in subsection  
10 (g)(1)(A).

11 (b) APPLICABILITY.—

12 (1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—Except as provided in  
13 subsection (i), this section does not apply to an executive agency that is subject to  
14 chapter 87 of title 10.

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

17 (c) MANAGEMENT POLICIES.—

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

19 (A) ESTABLISH POLICIES AND PROCEDURES.—After consultation with the  
20 Administrator, the head of each executive agency shall establish policies and  
21 procedures for the effective management (including accession, education,  
22 training, career development, and performance incentives) of the acquisition  
23 workforce of the agency. The development of acquisition workforce policies  
24 under this section shall be carried out consistent with the merit system  
25 principles set forth in section 2301(b) of title 5.

26 (B) ENSURE UNIFORM IMPLEMENTATION.—The head of each executive  
27 agency shall ensure that, to the maximum extent practicable, acquisition  
28 workforce policies and procedures established are uniform in their  
29 implementation throughout the agency.

30 (2) DUTIES OF ADMINISTRATOR.—The Administrator shall issue policies to  
31 promote uniform implementation of this section by executive agencies, with due  
32 regard for differences in program requirements among agencies that may be  
33 appropriate and warranted in view of the agency mission. The Administrator shall  
34 coordinate with the Deputy Director for Management of the Office of Management  
35 and Budget to ensure that the policies are consistent with the policies and procedures  
36 established, and enhanced system of incentives provided, pursuant to section  
37 5051(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355,  
38 108 Stat. 3351). The Administrator shall evaluate the implementation of this section  
39 by executive agencies.

40 (d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXECUTIVE.—Subject

1 to the authority, direction, and control of the head of an executive agency, the senior  
2 procurement executive of the agency shall carry out all powers, functions, and duties of  
3 the head of the agency with respect to implementing this section. The senior procurement  
4 executive shall ensure that the policies of the head of the executive agency established in  
5 accordance with this section are implemented throughout the agency.

6 (e) COLLECTING AND MAINTAINING INFORMATION.—The Administrator shall ensure  
7 that the heads of executive agencies collect and maintain standardized information on the  
8 acquisition workforce related to implementing this section. To the maximum extent  
9 practicable, information requirements shall conform to standards the Director of the  
10 Office of Personnel Management establishes for the Central Personnel Data File.

11 (f) CAREER DEVELOPMENT.—

12 (1) CAREER PATHS.—

13 (A) IDENTIFICATION.—The head of each executive agency shall ensure that  
14 appropriate career paths for personnel who desire to pursue careers in  
15 acquisition are identified in terms of the education, training, experience, and  
16 assignments necessary for career progression to the most senior acquisition  
17 positions. The head of each executive agency shall make available information  
18 on those career paths.

19 (B) CRITICAL DUTIES AND TASKS.—For each career path, the head of each  
20 executive agency shall identify the critical acquisition-related duties and tasks  
21 in which, at minimum, employees of the agency in the career path shall be  
22 competent to perform at full performance grade levels. For this purpose, the  
23 head of the executive agency shall provide appropriate coverage of the critical  
24 duties and tasks identified by the Director of the Federal Acquisition Institute.

25 (C) MANDATORY TRAINING AND EDUCATION.—For each career path, the head  
26 of each executive agency shall establish requirements for the completion of  
27 course work and related on-the-job training in the critical acquisition-related  
28 duties and tasks of the career path. The head of each executive agency also  
29 shall encourage employees to maintain the currency of their acquisition  
30 knowledge and generally enhance their knowledge of related acquisition  
31 management disciplines through academic programs and other self-  
32 developmental activities.

33 (2) PERFORMANCE INCENTIVES.—The head of each executive agency shall provide  
34 for an enhanced system of incentives to encourage excellence in the acquisition  
35 workforce that rewards performance of employees who contribute to achieving the  
36 agency's performance goals. The system of incentives shall include provisions  
37 that—

38 (A) relate pay to performance (including the extent to which the performance  
39 of personnel in the workforce contributes to achieving the cost goals, schedule  
40 goals, and performance goals established for acquisition programs pursuant to  
41 section 3103(b) of this title); and

42 (B) provide for consideration, in personnel evaluations and promotion  
43 decisions, of the extent to which the performance of personnel in the workforce

1 contributes to achieving the cost goals, schedule goals, and performance goals.

2 (g) QUALIFICATION REQUIREMENTS.—

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

4 (A) establish qualification requirements, including education requirements,  
5 for—

6 (i) entry-level positions in the General Schedule Contracting series  
7 (GS–1102);

8 (ii) senior positions in the General Schedule Contracting series (GS–  
9 1102);

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

12 (iv) positions in other General Schedule series in which significant  
13 acquisition-related functions are performed; and

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

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

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

27 (h) EDUCATION AND TRAINING.—

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

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

36 (3) RESTRICTED OBLIGATION.—Amounts appropriated for education and training  
37 under this section may not be obligated for another purpose.

38 (i) TRAINING FUND.—

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

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

4 (B) acquires new skills and a new perspective to enable it to contribute  
5 effectively in the changing environment of the 21st century.

6 (2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an acquisition  
7 workforce training fund. The Administrator of General Services shall manage the  
8 fund through the Federal Acquisition Institute to support the training of the  
9 acquisition workforce of the executive agencies, except as provided in paragraph  
10 (5). The Administrator of General Services shall consult with the Administrator in  
11 managing the fund.

12 (3) CREDITS TO FUND.—Five percent of the fees collected by executive agencies  
13 (other than the Department of Defense) under the following contracts shall be  
14 credited to the fund:

15 (A) Government-wide task and delivery-order contracts entered into under  
16 sections 4103 and 4105 of this title.

17 (B) Government-wide contracts for the acquisition of information technology  
18 as defined in section 11101 of title 40 and multiagency acquisition contracts for  
19 that technology authorized by section 11314 of title 40.

20 (C) multiple-award schedule contracts entered into by the Administrator of  
21 General Services.

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

26 (5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT OF DEFENSE.—The  
27 Administrator of General Services shall transfer to the Secretary of Defense fees  
28 collected from the Department of Defense pursuant to paragraph (3). The Defense  
29 Acquisition University shall use the fees for acquisition workforce training.

30 (6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Administrator of  
31 General Services, through the Office of Federal Procurement Policy, shall ensure  
32 that amounts collected for training under this subsection are not used for a purpose  
33 other than the purpose specified in paragraph (2).

34 (7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDUCATION AND  
35 TRAINING.—Amounts credited to the fund are in addition to amounts requested and  
36 appropriated for education and training referred to in subsection (h)(1).

37 (8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund remain available  
38 to be expended only in the fiscal year for which they are credited and the 2  
39 succeeding fiscal years.

40 (9) EXPIRATION.—This subsection ceases to be effective 5 years after November  
41 24, 2003.

1 (j) RECRUITMENT PROGRAM.—

2 (1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and  
3 5753 of title 5, the head of a department or agency of the Federal Government (other  
4 than the Secretary of Defense) may determine, under regulations prescribed by the  
5 Office of Personnel Management, that certain Federal acquisition positions (as  
6 described in subsection (g)(1)(A)) are shortage category positions in order to use the  
7 authorities in those sections to recruit and appoint highly qualified individuals  
8 directly to those positions in the department or agency.

9 (2) REPORT.—Not later than March 31, 2007, the Director of the Office of  
10 Personnel Management, in consultation with the Administrator, shall submit to  
11 Congress a report on the implementation of this subsection. The report shall  
12 include—

13 (A) a list of the departments and agencies that exercised the authority  
14 provided in this subsection and whether the exercise of the authority was  
15 carried out in accordance with the regulations of the Office of Personnel  
16 Management;

17 (B) the Director's assessment of the efficacy of the exercise of the authority  
18 provided in this subsection in attracting employees with unusually high  
19 qualifications to the acquisition workforce; and

20 (C) recommendations the Director considers appropriate on whether the  
21 authority to carry out the program should be extended.

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

25 **(k) REEMPLOYMENT WITHOUT LOSS OF ANNUITY.—**

26 **(1) ESTABLISHMENT OF POLICIES AND PROCEDURES.—The head of each**  
27 **executive agency, after consultation with the Administrator and the Director of**  
28 **the Office of Personnel Management, shall establish policies and procedures**  
29 **under which the agency head may reemploy in an acquisition-related position**  
30 **(as described in subsection (g)(1)(A)) an individual receiving an annuity from**  
31 **the Civil Service Retirement and Disability Fund, on the basis of the**  
32 **individual's service, without discontinuing the annuity. The head of each**  
33 **executive agency shall keep the Administrator informed of the agency's use of**  
34 **this authority.**

35 **(2) CRITERIA FOR CONTINUATION OF ANNUITY.—Policies and procedures**  
36 **established under paragraph (1) shall authorize the head of the executive**  
37 **agency, on a case-by-case basis, to continue an annuity if any of the following**  
38 **makes the reemployment of an individual essential:**

39 **(A) The unusually high or unique qualifications of an individual**  
40 **receiving an annuity from the Civil Service Retirement and Disability**  
41 **Fund on the basis of the individual's service.**

42 **(B) The exceptional difficulty in recruiting or retaining a qualified**

1           employee.

2           (C) A temporary emergency hiring need.

3           (3) SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual reemployed  
4 under this subsection shall not be deemed an employee for purposes of chapter  
5 83 or 84 of title 5.

6           (4) REPORTING REQUIREMENT.—The Administrator shall submit annually to  
7 the Committee on Oversight and Government Reform of the House of  
8 Representatives and the Committee on Homeland Security and Governmental  
9 Affairs of the Senate a report on the use of the authority under this subsection,  
10 including the number of employees reemployed under authority of this  
11 subsection.

12           (5) SUNSET PROVISION.—The authority under this subsection expires on  
13 December 31, 2011.

## 14 1704. Advocates for competition

15 (a) ESTABLISHMENT AND DESIGNATION.—

16 (1) ESTABLISHMENT.—Each executive agency has an advocate for competition.

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

18 (A) designate for the executive agency and for each procuring activity of the  
19 executive agency one officer or employee serving in a position authorized for  
20 the executive agency on July 18, 1984 (other than the senior procurement  
21 executive designated pursuant to section 1702(c) of this title) to serve as the  
22 advocate for competition;

23 (B) not assign those officers or employees duties or responsibilities that are  
24 inconsistent with the duties and responsibilities of the advocates for  
25 competition; and

26 (C) provide those officers or employees with the staff or assistance necessary  
27 to carry out the duties and responsibilities of the advocate for competition, such  
28 as individuals who are specialists in engineering, technical operations, contract  
29 administration, financial management, supply management, and utilization of  
30 small and disadvantaged business concerns.

31 (b) DUTIES AND FUNCTIONS.—The advocate for competition of an executive agency  
32 shall—

33 (1) be responsible for challenging barriers to, and promoting full and open  
34 competition in, the procurement of property and services by the executive agency;

35 (2) review the procurement activities of the executive agency;

36 (3) identify and report to the senior procurement executive of the executive  
37 agency—

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

1 (B) any condition or action which has the effect of unnecessarily restricting  
2 competition in the procurement actions of the executive agency;

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

5 (A) the advocate’s activities under this section;

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

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

8 (5) recommend to the senior procurement executive—

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

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

14 (6) describe other ways in which the executive agency has emphasized  
15 competition in programs for procurement training and research.

16 (c) RESPONSIBILITIES.—The advocate for competition for each procuring activity is  
17 responsible for promoting full and open competition, promoting the acquisition of  
18 commercial items, and challenging barriers to acquisition, including unnecessarily  
19 restrictive statements of need, unnecessarily detailed specifications, and unnecessarily  
20 burdensome contract clauses.

## 21 1705. Personnel evaluation

22 The head of each executive agency subject to ~~part~~ **division C** shall ensure, with respect  
23 to the employees of that agency whose primary duties and responsibilities pertain to the  
24 award of contracts subject to the provisions of the Small Business and Federal  
25 Procurement Competition Enhancement Act of 1984 (Public Law 98–577, 98 Stat. 3066),  
26 that the performance appraisal system applicable to those employees affords appropriate  
27 recognition to, among other factors, efforts to—

28 (1) increase competition and achieve cost savings through the elimination of  
29 procedures that unnecessarily inhibit full and open competition;

30 (2) further the purposes of the Small Business and Federal Procurement  
31 Competition Enhancement Act of 1984 (Public Law 98–577, 98 Stat. 3066) and the  
32 Defense Procurement Reform Act of 1984 (Public Law 98–525, title XII, 98 Stat.  
33 2588); and

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

## 36 1706. Publication of proposed regulations

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

38 (1) REQUIRED COMMENT PERIOD.—Except as provided in subsection (d), a

1 procurement policy, regulation, procedure, or form (including an amendment or  
2 modification thereto) may not take effect until 60 days after it is published for public  
3 comment in the Federal Register pursuant to subsection (b) if it—

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

5 (B)(i) has a significant effect beyond the internal operating procedures of the  
6 agency issuing the policy, regulation, procedure, or form; or

7 (ii) has a significant cost or administrative impact on contractors or offerors.

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

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

17 (c) CONTENTS OF NOTICE.—Notice of a proposed procurement policy, regulation,  
18 procedure, or form prepared for publication in the Federal Register shall include—

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

23 (2) a request for interested parties to submit comments on the proposal and the  
24 name and address of the officer or employee of the Federal Government designated  
25 to receive the comments.

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

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

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

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

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

38 (2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After considering the  
39 comments received, the head of the agency waiving the requirements of subsections  
40 (a) and (b) under subsection (d) may issue the final procurement policy, regulation,

1 procedure, or form.

## 2 1707. Procurement notice

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

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

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

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

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

14 (3) an executive agency awarding a contract for property or services for a price  
15 exceeding \$25,000, or placing an order exceeding \$25,000 under a basic agreement,  
16 basic ordering agreement, or similar arrangement, shall furnish for publication a  
17 notice announcing the award or order if there is likely to be a subcontract under the  
18 contract or order.

19 (b) EXEMPTIONS.—

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

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

23 (i) using widespread electronic public notice of the solicitation in a form  
24 that allows convenient and universal user access through a single,  
25 Government-wide point of entry; and

26 (ii) permitting the public to respond to the solicitation electronically;

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

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

30 (i) an unsolicited proposal that demonstrates a unique and innovative  
31 research concept and publication of a notice of the unsolicited research  
32 proposal would disclose the originality of thought or innovativeness of the  
33 proposal or would disclose proprietary information associated with the  
34 proposal; or

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

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

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

2 (F) the procurement is for utility services, other than telecommunication  
3 services, and only one source is available;

4 (G) the procurement is for the services of an expert for use in any litigation  
5 or dispute (including any reasonably foreseeable litigation or dispute) involving  
6 the Federal Government in a trial, hearing, or proceeding before a court,  
7 administrative tribunal, or agency, or in any part of an alternative dispute  
8 resolution process, whether or not the expert is expected to testify; or

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

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

14 (A) under conditions described in paragraph (2), (3), (4), (5), or (7) of  
15 section 3303(a) of this title or paragraph (2), (3), (4), (5), or (7) of section  
16 2304(c) of title 10; or

17 (B) for which the head of the executive agency makes a determination in  
18 writing, after consultation with the Administrator and the Administrator of the  
19 Small Business Administration, that it is not appropriate or reasonable to  
20 publish a notice before issuing a solicitation.

21 (3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.—  
22 Paragraph (1)(A) shall be implemented in a manner consistent with applicable  
23 international agreements.

24 (c) CONTENTS OF NOTICE.—Each notice of solicitation required by paragraph (1) or (2)  
25 of subsection (a) shall include—

26 (1) an accurate description of the property or services to be contracted for, which  
27 description—

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

29 (B) shall include, as appropriate, the agency nomenclature, National Stock  
30 Number or other part number, and a brief description of the item's form, fit, or  
31 function, physical dimensions, predominant material of manufacture, or similar  
32 information that will assist a prospective contractor to make an informed  
33 business judgment as to whether a copy of the solicitation should be requested;

34 (2) provisions that—

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

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

39 (B)(i) state whether an offeror or its product or service must meet a  
40 qualification requirement in order to be eligible for award; and

1 (ii) if so, identify the office from which the qualification requirement may be  
2 obtained;

3 (3) the name, business address, and telephone number of the contracting officer;

4 (4) a statement that all responsible sources may submit a bid, proposal, or  
5 quotation (as appropriate) that the agency shall consider;

6 (5) in the case of a procurement using procedures other than competitive  
7 procedures, a statement of the reason justifying the use of those procedures and the  
8 identity of the intended source; and

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

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

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

15 (d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.—A  
16 notice of solicitation, award, or order required to be published under subsection (a) shall  
17 be published by electronic means. The notice must be electronically accessible in a form  
18 that allows convenient and universal user access through the single Government-wide  
19 point of entry designated in the Federal Acquisition Regulation.

20 (e) TIME LIMITATIONS.—

21 (1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR  
22 SUBMITTING BIDS AND PROPOSALS.—An executive agency required by subsection  
23 (a)(2) to publish a notice of solicitation may not—

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

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

29 (i) in the case of a solicitation for research and development, is earlier  
30 than 45 days after the date the notice required for a bid or proposal for a  
31 contract described in subsection (a)(2)(A) is published;

32 (ii) in the case of an order under a basic agreement, basic ordering  
33 agreement, or similar arrangement, is earlier than 30 days after the date the  
34 notice required for an order described in subsection (a)(2)(B) is published;  
35 or

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

38 (2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.—An executive  
39 agency shall establish a deadline for the submission of all bids or proposals in  
40 response to a solicitation for which a deadline is not provided by statute. Each

1 deadline for the submission of offers shall afford potential offerors a reasonable  
2 opportunity to respond.

3 (3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regulations defining  
4 limited circumstances in which flexible deadlines can be used under paragraph (1)  
5 for the issuance of solicitations and the submission of bids or proposals for the  
6 procurement of commercial items.

7 (f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An executive agency  
8 intending to solicit offers for a contract for which a notice of solicitation is required to be  
9 posted under subsection (a)(1) shall ensure that contracting officers consider each  
10 responsive offer timely received from an offeror.

11 (g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.—An  
12 executive agency shall make available to a business concern, or the authorized  
13 representative of a concern, the complete solicitation package for any on-going  
14 procurement announced pursuant to a notice of solicitation under subsection (a). An  
15 executive agency may require the payment of a fee, not exceeding the actual cost of  
16 duplication, for a copy of the package.

## 17 1708. Contracting functions performed by Federal personnel

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

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

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

21 (3) an individual assigned to a Federal agency pursuant to subchapter VI of  
22 chapter 33 of title 5.

23 (b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—No  
24 individual who is not an individual described in subsection (a) may be paid by an  
25 executive agency for services to conduct evaluations or analyses of any aspect of a  
26 proposal submitted for an acquisition unless personnel described in subsection (a) with  
27 adequate training and capabilities to perform the evaluations and analyses are not readily  
28 available in the agency or another Federal agency. When administering this subsection,  
29 the head of each executive agency shall determine in accordance with standards and  
30 procedures prescribed in the Federal Acquisition Regulation whether—

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

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

36 (c) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not affect the  
37 relationship between the Federal Government and a Federally funded research and  
38 development center.

## 39 1709. Value engineering

1 Each executive agency shall establish and maintain cost-effective procedures and  
2 processes for analyzing the functions of a program, project, system, product, item of  
3 equipment, building, facility, service, or supply of the agency. The analysis shall be—

- 4 (1) performed by qualified agency or contractor personnel; and  
5 (2) directed at improving performance, reliability, quality, safety, and life cycle  
6 costs.

## 7 1710. Record requirements

8 (a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall establish and  
9 maintain for 5 years a computer file, by fiscal year, containing unclassified records of all  
10 procurements greater than the simplified acquisition threshold in that fiscal year.

11 (b) CONTENTS.—The record established under subsection (a) shall include, with  
12 respect to each procurement carried out using—

13 (1) competitive procedures—

- 14 (A) the date of contract award;  
15 (B) information identifying the source to whom the contract was awarded;  
16 (C) the property or services the Federal Government obtains under the  
17 procurement; and  
18 (D) the total cost of the procurement; or

19 (2) procedures other than competitive procedures—

- 20 (A) the information described in paragraph (1);  
21 (B) the reason under section 3303(a) of this title or section 2304(c) of title 10  
22 for using the procedures; and  
23 (C) the identity of the organization or activity that conducted the  
24 procurement.

25 (c) SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN ONE BID OR  
26 PROPOSAL.—Information included in a record pursuant to subsection (b)(1) that relates to  
27 procurements resulting in the submission of a bid or proposal by only one responsible  
28 source shall be separately categorized from the information relating to other  
29 procurements included in the record. The record of that information shall be designated  
30 “noncompetitive procurements using competitive procedures”.

31 (d) TRANSMISSION AND DATA SYSTEM ENTRY OF INFORMATION.—Information included  
32 in the record established and maintained under subsection (a) shall be transmitted to the  
33 Administrator of General Services and shall be entered in the Federal Procurement Data  
34 System referred to in section 1122(a)(4) of this title.

## 35 1711. Procurement data

36 (a) DEFINITIONS.—In this section:

- 37 (1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term “qualified

1 HUBZone small business concern” has the meaning given that term in section 3(p)  
2 of the Small Business Act (15 U.S.C. 632(p)).

3 (2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND  
4 ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concern  
5 owned and controlled by socially and economically disadvantaged individuals” has  
6 the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C.  
7 637(d)).

8 (3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term  
9 “small business concern owned and controlled by women” has the meaning given  
10 that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section  
11 204 of the Women’s Business Ownership Act of 1988 (Public Law 100–533, 102  
12 Stat. 2692).

13 (b) REPORTING.—Each Federal agency shall report to the Office of Federal  
14 Procurement Policy the number of qualified HUBZone small business concerns, the  
15 number of small businesses owned and controlled by women, and the number of small  
16 business concerns owned and controlled by socially and economically disadvantaged  
17 individuals, by gender, that are first time recipients of contracts from the agency. The  
18 Office shall take appropriate action to ascertain, for each fiscal year, the number of those  
19 small businesses that have newly entered the Federal market.

## 20 CHAPTER 19—SIMPLIFIED ACQUISITION 21 PROCEDURES

22 Sec.

23 1901.Simplified acquisition procedures.

24 1902.Procedures applicable to purchases below micro-purchase threshold.

25 1903.Special emergency procurement authority.

26 1904.Certain transactions for defense against attack.

27 1905.List of laws inapplicable to contracts or subcontracts not greater than simplified  
28 acquisition threshold.

29 1906.List of laws inapplicable to procurements of commercial items.

30 1907.List of laws inapplicable to procurements of commercially available off-the-shelf  
31 items.

32 1908.Inflation adjustment of acquisition-related dollar thresholds.

### 33 1901.Simplified acquisition procedures

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

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

1 (2) greater than the simplified acquisition threshold but not greater than  
2 \$5,000,000 for which the contracting officer reasonably expects, based on the nature  
3 of the property or services sought and on market research, that offers will include  
4 only commercial items.

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

9 (c) PROMOTION OF COMPETITION REQUIRED.—When using simplified acquisition  
10 procedures, the head of an executive agency shall promote competition to the maximum  
11 extent practicable.

12 (d) CONSIDERATION OF OFFERS TIMELY RECEIVED.—The simplified acquisition  
13 procedures contained in the Federal Acquisition Regulation shall include a requirement  
14 that a contracting officer consider each responsive offer timely received from an eligible  
15 offeror.

16 (e) REPORT.—Until October 1, 2004, procuring activities shall continue to report under  
17 section 1710(d) of this title procurement awards of at least \$25,000, but less than  
18 \$100,000, in conformity with the procedures for the reporting of a contract award greater  
19 than \$25,000 that were in effect on October 1, 1992.

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

23 (1) shall publish a notice in accordance with section 1707 of this title and, as  
24 provided in section 1707(c)(4) of this title, permit all responsible sources to submit a  
25 bid, proposal, or quotation (as appropriate) that the agency shall consider;

26 (2) may not conduct the purchase on a sole source basis unless the need to do so is  
27 justified in writing and approved in accordance with section 2304(f) of title 10 or  
28 section 3303(d) of this title, as applicable; and

29 (3) shall include in the contract file a written description of the procedures used in  
30 awarding the contract and the number of offers received.

## 31 1902.Procedures applicable to purchases below micro- 32 purchase threshold

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

34 (b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICABILITY OF CERTAIN  
35 AUTHORITY.—

36 (1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each executive  
37 agency shall ensure that procuring activities of that agency, when awarding a  
38 contract with a price exceeding the micro-purchase threshold, comply with the  
39 requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section  
40 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of

1 1994 (Public Law 103–355, 15 U.S.C. 644 note).

2 (2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority under part  
3 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in  
4 effect on November 18, 1993, to make purchases without securing competitive  
5 quotations does not apply to a purchase with a price exceeding the micro-purchase  
6 threshold.

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

10 (d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not greater than  
11 \$2,500 may be made without obtaining competitive quotations if an employee of an  
12 executive agency or a member of the armed forces, authorized to do so, determines that  
13 the price for the purchase is reasonable.

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

16 (f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.—This section  
17 shall be implemented through the Federal Acquisition Regulation.

## 18 1903.Special emergency procurement authority

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

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

24 (2) to facilitate the defense against or recovery from nuclear, biological, chemical,  
25 or radiological attack against the United States.

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

28 (1) the amount specified in section 1902(a), (d), and (e) of this title shall be  
29 deemed to be—

30 (A) \$15,000 in the case of a contract to be awarded and performed, or  
31 purchase to be made, in the United States; and

32 (B) \$25,000 in the case of a contract to be awarded and performed, or  
33 purchase to be made, outside the United States;

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

35 (A) \$250,000 in the case of a contract to be awarded and performed, or  
36 purchase to be made, in the United States; and

37 (B) \$1,000,000 in the case of a contract to be awarded and performed, or  
38 purchase to be made, outside the United States; and

39 (3) the \$5,000,000 limitation in sections 1901(a)(2) and 3304(a)(2) of this title

1 and section 2304(g)(1)(B) of title 10 is deemed to be \$10,000,000.

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

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

7 (2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.—A  
8 contract in an amount of more than \$15,000,000 that is awarded on a sole source  
9 basis for an item or service treated as a commercial item under paragraph (1) is not  
10 exempt from—

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

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

## 14 1904. Certain transactions for defense against attack

15 (a) AUTHORITY.—

16 (1) IN GENERAL.—The head of an executive agency that engages in basic research,  
17 applied research, advanced research, and development projects that are necessary to  
18 the responsibilities of the executive agency in the field of research and development  
19 and have the potential to facilitate defense against or recovery from terrorism or  
20 nuclear, biological, chemical, or radiological attack may exercise the same authority  
21 (subject to the same restrictions and conditions) with respect to the research and  
22 projects as the Secretary of Defense may exercise under section 2371 of title 10,  
23 except for subsections (b) and (f) of section 2371.

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

33 (3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying the  
34 requirements and conditions of section 845 of that Act under this subsection—

35 (A) section 845(c) of that Act shall apply with respect to prototype projects  
36 carried out under paragraph (2); and

37 (B) the Director of the Office of Management and Budget shall perform the  
38 functions of the Secretary of Defense under section 845(d) of that Act.

39 (4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

40 (A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an executive

1 agency may exercise authority under this subsection for a project only if  
2 authorized by the Director of the Office of Management and Budget.

3 (B) DEPARTMENT OF HOMELAND SECURITY.—Authority under this subsection  
4 does not apply to the Secretary of Homeland Security while section 831 of the  
5 Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

6 (b) REGULATIONS.—The Director of the Office of Management and Budget shall  
7 prescribe regulations to carry out this section. No transaction may be conducted under the  
8 authority of this section before the regulations take effect.

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

14 (d) TERMINATION OF AUTHORITY.—The authority to carry out transactions under  
15 subsection (a) terminates on September 30, 2008.

## 16 1905.List of laws inapplicable to contracts or subcontracts 17 not greater than simplified acquisition threshold

18 (a) DEFINITION.—In this section, the term “Council” has the meaning given that term  
19 in section 1301 of this title.

20 (b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

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

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

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

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

40 (2) specifically refers to this section and provides that, notwithstanding this

1 section, it shall be applicable to contracts or subcontracts in amounts not greater than  
2 the simplified acquisition threshold.

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

## 10 1906.List of laws inapplicable to procurements of 11 commercial items

12 (a) DEFINITION.—In this section, the term “Council” has the meaning given that term  
13 in section 1301 of this title.

14 (b) CONTRACTS.—

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

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

27 (c) SUBCONTRACTS.—

28 (1) DEFINITION.—In this subsection, the term “subcontract” includes a transfer of  
29 commercial items between divisions, subsidiaries, or affiliates of a contractor or  
30 subcontractor.

31 (2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition  
32 Regulation shall include a list of provisions of law that are inapplicable to  
33 subcontracts under a contract or subcontract for the procurement of commercial  
34 items. A provision of law properly included on the list pursuant to paragraph (3)  
35 does not apply to those subcontracts. This section does not render a provision of law  
36 not included on the list inapplicable to subcontracts under a contract for the  
37 procurement of commercial items.

38 (3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law described in  
39 subsection (d) shall be included on the list of inapplicable provisions of law required  
40 by paragraph (2) unless the Council makes a written determination that it would not  
41 be in the best interest of the Federal Government to exempt subcontracts under a

1 contract for the procurement of commercial items from the applicability of the  
2 provision.

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

7 (d) COVERED LAW.—A provision of law referred to in subsections (b)(2) and (c) is a  
8 provision of law that the Council determines sets forth policies, procedures, requirements,  
9 or restrictions for the procurement of property or services by the Federal Government,  
10 except for a provision of law that—

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

12 (2) specifically refers to this section and provides that, notwithstanding this  
13 section, it shall be applicable to contracts for the procurement of commercial items.

14 (e) PETITION.—A person may petition the Administrator to take appropriate action  
15 when a provision of law described in subsection (d) is not included on the list of  
16 inapplicable provisions of law as required by subsection (b) or (c) and the Council has  
17 not made a written determination pursuant to subsection (b)(2) or (c)(3). The  
18 Administrator shall revise the Federal Acquisition Regulation to include the provision on  
19 the list of inapplicable provisions of law unless the Council makes a determination  
20 pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

## 21 1907.List of laws inapplicable to procurements of 22 commercially available off-the-shelf items

23 (a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

24 (1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of  
25 provisions of law that are inapplicable to contracts for the procurement of  
26 commercially available off-the-shelf items. A provision of law properly included on  
27 the list pursuant to paragraph (2) does not apply to contracts for the procurement of  
28 commercially available off-the-shelf items. This section does not render a provision  
29 of law not included on the list inapplicable to contracts for the procurement of  
30 commercially available off-the-shelf items.

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

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

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

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

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

- 1 (ii) section 2305(e) and (f) of title 10; or
- 2 (iii) sections 3706 and 3707 of this title.

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

- 9 (1) provides for criminal or civil penalties; or
- 10 (2) specifically refers to this section and provides that, notwithstanding this  
11 section, it shall be applicable to contracts for the procurement of commercially  
12 available off-the-shelf items.

## 13 1908. Inflation adjustment of acquisition-related dollar 14 thresholds

15 (a) DEFINITION.—In this section, the term “Council” has the meaning given that term  
16 in section 1301 of this title.

17 (b) APPLICATION.—

18 (1) IN GENERAL.—Except as provided in paragraph (2), the requirement for  
19 adjustment under subsection (c) applies to a dollar threshold that is specified in law  
20 as a factor in defining the scope of the applicability of a policy, procedure,  
21 requirement, or restriction provided in that law to the procurement of property or  
22 services by an executive agency, as the Council determines.

23 (2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresholds—

24 (A) in chapter 67 of this title;

25 (B) in sections 3141 to 3144, 3146, and 3147 of title 40; or

26 (C) the United States Trade Representative establishes pursuant to title III of  
27 the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.).

28 (3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—This section  
29 supersedes the applicability of other provisions of law that provide for the  
30 adjustment of a dollar threshold that is adjustable under this section.

31 (c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

32 (1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of paragraph (2), the  
33 baseline constant dollar value for a dollar threshold—

34 (A) in effect on October 1, 2000, that was first specified in a law that took  
35 effect on or before October 1, 2000, is the October 1, 2000, constant dollar  
36 value of that dollar threshold; and

37 (B) specified in a law that takes effect after October 1, 2000, is the constant  
38 dollar value of that threshold as of the effective date of that dollar threshold

1           pursuant to that law.

2           (2) ADJUSTMENT.—On October 1 of each year evenly divisible by 5, the Council  
3 shall adjust each acquisition-related dollar threshold provided by law, as described  
4 in subsection (b)(1), to the baseline constant dollar value of that threshold.

5           (3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjustable under this  
6 section shall be adjusted only as provided in this section.

7           (d) PUBLICATION.—The Council shall publish a notice of the adjusted dollar thresholds  
8 under this section in the Federal Register. The thresholds take effect on the date of  
9 publication.

10          (e) CALCULATION.—An adjustment under this section shall be—

11           (1) calculated on the basis of changes in the Consumer Price Index for all-urban  
12 consumers published monthly by the Secretary of Labor; and

13           (2) rounded, in the case of a dollar threshold that on the day before the adjustment  
14 is—

15                   (A) less than \$10,000, to the nearest \$500;

16                   (B) not less than \$10,000, but less than \$100,000, to the nearest \$5,000;

17                   (C) not less than \$100,000, but less than \$1,000,000, to the nearest \$50,000;

18                   and

19                   (D) \$1,000,000 or more, to the nearest \$500,000.

20          (f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—

21           (1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may request adjustment  
22 of a dollar threshold adjustable under this section that is not included in a notice of  
23 adjustment published under subsection (d) by submitting a petition for adjustment to  
24 the Administrator.

25           (2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for adjustment of a  
26 dollar threshold under paragraph (1), the Administrator—

27                   (A) shall determine, in writing, whether the dollar threshold is required to be  
28 adjusted under this section; and

29                   (B) on determining that it should be adjusted, shall publish in the Federal  
30 Register a revised notice of the adjustment dollar thresholds under this section  
31 that includes the adjustment of the dollar threshold covered by the petition.

32           (3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjustment of a dollar  
33 threshold pursuant to a petition under this subsection takes effect on the date the  
34 revised notice adding the adjustment under paragraph (2)(B) is published.

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

37 Sec.

1 2101.Definitions.

2 2102.Prohibitions on disclosing and obtaining procurement information.

3 2103.Actions required of procurement officers when contacted regarding non-Federal  
4 employment.

5 2104.Prohibition on former official's acceptance of compensation from contractor.

6 2105.Penalties and administrative actions.

7 2106.Reporting information believed to constitute evidence of offense.

8 2107.Savings provisions.

## 9 2101.Definitions

10 In this chapter:

11 (1) CONTRACTING OFFICER.—The term “contracting officer” means an individual  
12 who, by appointment in accordance with applicable regulations, has the authority to  
13 enter into a Federal agency procurement contract on behalf of the Government and  
14 to make determinations and findings with respect to the contract.

15 (2) CONTRACTOR BID OR PROPOSAL INFORMATION.—The term “contractor bid or  
16 proposal information” means any of the following information submitted to a  
17 Federal agency as part of, or in connection with, a bid or proposal to enter into a  
18 Federal agency procurement contract, if that information previously has not been  
19 made available to the public or disclosed publicly:

20 (A) Cost or pricing data (as defined in section 2306a(h) of title 10 with  
21 respect to procurements subject to that section and section 3501 of this title  
22 with respect to procurements subject to that section).

23 (B) Indirect costs and direct labor rates.

24 (C) Proprietary information about manufacturing processes, operations, or  
25 techniques marked by the contractor in accordance with applicable law or  
26 regulation.

27 (D) Information marked by the contractor as “contractor bid or proposal  
28 information”, in accordance with applicable law or regulation.

29 (3) FEDERAL AGENCY.—The term “Federal agency” has the meaning given that  
30 term in section 102 of title 40.

31 (4) FEDERAL AGENCY PROCUREMENT.—The term “Federal agency procurement”  
32 means the acquisition (by using competitive procedures and awarding a contract) of  
33 goods or services (including construction) from non-Federal sources by a Federal  
34 agency using appropriated amounts.

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

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

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

1 (C) a member of the uniformed services, as defined in section 2101(3) of title  
2 5.

3 (6) PROTEST.—The term “protest” means a written objection by an interested  
4 party to the award or proposed award of a Federal agency procurement contract,  
5 pursuant to subchapter V of chapter 35 of title 31.

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

11 (A) Bid prices submitted in response to a Federal agency solicitation for  
12 sealed bids, or lists of those bid prices before public bid opening.

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

15 (C) Source selection plans.

16 (D) Technical evaluation plans.

17 (E) Technical evaluations of proposals.

18 (F) Cost or price evaluations of proposals.

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

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

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

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

## 29 2102. Prohibitions on disclosing and obtaining procurement 30 information

31 (a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

32 (1) IN GENERAL.—Except as provided by law, a person described in paragraph (3)  
33 shall not knowingly disclose contractor bid or proposal information or source  
34 selection information before the award of a Federal agency procurement contract to  
35 which the information relates.

36 (2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction  
37 in paragraph (1), an employee of a private sector organization assigned to an agency  
38 under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal  
39 information or source selection information during the 3-year period after the

1 employee's assignment ends, except as provided by law.

2 (3) APPLICATION.—Paragraph (1) applies to a person that—

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

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

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

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

### 13 2103.Actions required of procurement officers when 14 contacted regarding non-Federal employment

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

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

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

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

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

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

34 (b) RETENTION OF REPORTS.—The agency shall retain each report required by this  
35 section for not less than 2 years following the submission of the report. The reports shall  
36 be made available to the public on request, except that any part of a report that is exempt  
37 from the disclosure requirements of section 552(b)(1) of title 5 may be withheld from  
38 disclosure to the public.

39 (c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and

1 administrative actions set forth in section 2105 of this title:

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

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

## 7 2104. Prohibition on former official's acceptance of 8 compensation from contractor

9 (a) PROHIBITION.—A former official of a Federal agency may not accept compensation  
10 from a contractor as an employee, officer, director, or consultant of the contractor within  
11 one year after the official—

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

17 (2) served as the program manager, deputy program manager, or administrative  
18 contracting officer for a contract in excess of \$10,000,000 awarded to that  
19 contractor; or

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

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

23 (B) establish overhead or other rates applicable to one or more contracts for  
24 that contractor that are valued in excess of \$10,000,000;

25 (C) approve issuance of one or more contract payments in excess of  
26 \$10,000,000 to that contractor; or

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

28 (b) WHEN COMPENSATION MAY BE ACCEPTED.—Subsection (a) does not prohibit a  
29 former official of a Federal agency from accepting compensation from a division or  
30 affiliate of a contractor that does not produce the same or similar products or services as  
31 the entity of the contractor that is responsible for the contract referred to in paragraph (1),  
32 (2), or (3) of subsection (a).

33 (c) IMPLEMENTING REGULATIONS.—Regulations implementing this section shall  
34 include procedures for an official or former official of a Federal agency to request advice  
35 from the appropriate designated agency ethics official regarding whether the official or  
36 former official is or would be precluded by this section from accepting compensation  
37 from a particular contractor.

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

1 (1) A former official who knowingly accepts compensation in violation of this  
2 section.

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

## 5 2105. Penalties and administrative actions

6 (a) CRIMINAL PENALTIES.—A person that violates section 2102 of this title to exchange  
7 information covered by section 2102 of this title for anything of value or to obtain or give  
8 a person a competitive advantage in the award of a Federal agency procurement contract  
9 shall be fined under title 18, imprisoned for not more than 5 years, or both.

10 (b) CIVIL PENALTIES.—The Attorney General may bring a civil action in an appropriate  
11 district court of the United States against a person that engages in conduct that violates  
12 section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of  
13 the evidence—

14 (1) an individual is liable to the Federal Government for a civil penalty of not  
15 more than \$50,000 for each violation plus twice the amount of compensation that the  
16 individual received or offered for the prohibited conduct; and

17 (2) an organization is liable to the Federal Government for a civil penalty of not  
18 more than \$500,000 for each violation plus twice the amount of compensation that  
19 the organization received or offered for the prohibited conduct.

20 (c) ADMINISTRATIVE ACTIONS.—

21 (1) TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.—A Federal agency that  
22 receives information that a contractor or a person has violated section 2102, 2103, or  
23 2104 of this title shall consider taking one or more of the following actions, as  
24 appropriate:

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

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

28 (i) the contractor or someone acting for the contractor has been  
29 convicted for an offense punishable under subsection (a); or

30 (ii) the head of the agency that awarded the contract has determined,  
31 based on a preponderance of the evidence, that the contractor or a person  
32 acting for the contractor has engaged in conduct constituting the offense.

33 (C) Initiating a suspension or debarment proceeding for the protection of the  
34 Federal Government in accordance with procedures in the Federal Acquisition  
35 Regulation.

36 (D) Initiating an adverse personnel action, pursuant to the procedures in  
37 chapter 75 of title 5 or other applicable law or regulation.

38 (2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Federal agency  
39 rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled

1 to recover, in addition to any penalty prescribed by law, the amount expended under  
2 the contract.

3 (3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For purposes of a  
4 suspension or debarment proceeding initiated pursuant to paragraph (1)(C),  
5 engaging in conduct constituting an offense under section 2102, 2103, or 2104 of  
6 this title affects the present responsibility of a Federal Government contractor or  
7 subcontractor.

## 8 2106. Reporting information believed to constitute evidence 9 of offense

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

## 16 2107. Savings provisions

17 This chapter does not—

18 (1) restrict the disclosure of information to, or its receipt by, a person or class of  
19 persons authorized, in accordance with applicable agency regulations or procedures,  
20 to receive that information;

21 (2) restrict a contractor from disclosing its own bid or proposal information or the  
22 recipient from receiving that information;

23 (3) restrict the disclosure or receipt of information relating to a Federal agency  
24 procurement after it has been canceled by the Federal agency before contract award  
25 unless the Federal agency plans to resume the procurement;

26 (4) prohibit individual meetings between a Federal agency official and an offeror  
27 or potential offeror for, or a recipient of, a contract or subcontract under a Federal  
28 agency procurement, provided that unauthorized disclosure or receipt of contractor  
29 bid or proposal information or source selection information does not occur;

30 (5) authorize the withholding of information from, nor restrict its receipt by,  
31 Congress, a committee or subcommittee of Congress, the Comptroller General, a  
32 Federal agency, or an inspector general of a Federal agency;

33 (6) authorize the withholding of information from, nor restrict its receipt by, the  
34 Comptroller General in the course of a protest against the award or proposed award  
35 of a Federal agency procurement contract; or

36 (7) limit the applicability of a requirement, sanction, contract penalty, or remedy  
37 established under another law or regulation.

## 38 CHAPTER 23—MISCELLANEOUS

1 Sec.

2 2301.Use of electronic commerce in Federal procurement.

3 2302.Rights in technical data.

4 2303.Conflict of interest standards for consultants.

5 2304.Authority of Director of Office of Management and Budget not affected.

6 2305.Openness of meetings.

7 2306.Comptroller General’s access to information.

8 2307.Modular contracting for information technology.

9 2308.Protection of constitutional rights of contractors.

10 2309.Performance-based contracts or task orders for services to be treated as contracts  
11 for the procurement of commercial items.

## 12 2301.Use of electronic commerce in Federal procurement

13 (a) DEFINITION.—For the purposes of this section, the term “electronic commerce”  
14 means electronic techniques for accomplishing business transactions, including electronic  
15 mail or messaging, World Wide Web technology, electronic bulletin boards, purchase  
16 cards, electronic funds transfers, and electronic data interchange.

17 (b) ESTABLISHMENT, MAINTENANCE, AND USE OF ELECTRONIC COMMERCE  
18 PROCEDURES AND PROCESSES.—The head of each executive agency, after consulting with  
19 the Administrator, shall establish, maintain, and use, to the maximum extent that is  
20 practicable and cost-effective, procedures and processes that employ electronic  
21 commerce in the conduct and administration of the procurement system of the agency.

22 (c) APPLICABLE STANDARDS.—In conducting electronic commerce, the head of an  
23 executive agency shall apply nationally and internationally recognized standards that  
24 broaden interoperability and ease the electronic interchange of information.

25 (d) REQUIREMENTS OF SYSTEMS, TECHNOLOGIES, PROCEDURES, AND PROCESSES.—The  
26 head of each executive agency shall ensure that systems, technologies, procedures, and  
27 processes established pursuant to this section—

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

30 (2) are implemented only after granting due consideration to the use or partial use,  
31 as appropriate, of existing electronic commerce and electronic data interchange  
32 systems and infrastructures such as the Federal acquisition computer network  
33 architecture known as FACNET;

34 (3) facilitate access to Federal Government procurement opportunities, including  
35 opportunities for small business concerns, socially and economically disadvantaged  
36 small business concerns, and business concerns owned predominantly by women;  
37 and

38 (4) ensure that any notice of agency requirements or agency solicitation for

1 contract opportunities is provided in a form that allows convenient and universal  
2 user access through a single, Government-wide point of entry.

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

5 (1) issue policies to promote, to the maximum extent practicable, uniform  
6 implementation of this section by executive agencies, with due regard for  
7 differences in program requirements among agencies that may require departures  
8 from uniform procedures and processes in appropriate cases, when warranted  
9 because of the agency mission;

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

12 (3) consult with the heads of appropriate Federal agencies with applicable  
13 technical and functional expertise, including the Office of Information and  
14 Regulatory Affairs, the National Institute of Standards and Technology, the General  
15 Services Administration, and the Department of Defense.

## 16 2302.Rights in technical data

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

20 (b) GENERAL EXTENT OF REGULATIONS.—

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

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

34 (c) TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.—

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

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

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

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

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

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

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

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

14 (A) exclusively with Federal funds;

15 (B) exclusively at private expense; or

16 (C) in part with Federal funds and in part at private expense.

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

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

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

27 (1) defining the respective rights of the Federal Government and the contractor or  
28 subcontractor (at any tier) regarding technical data to be delivered under the  
29 contract;

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

32 (3) establishing or referencing procedures for determining the acceptability of  
33 technical data to be delivered under the contract;

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

36 (5) to the maximum practicable extent, identifying, in advance of delivery,  
37 technical data which is to be delivered with restrictions on the right of the Federal  
38 Government to use the data;

39 (6) requiring the contractor to revise any technical data delivered under the  
40 contract to reflect engineering design changes made during the performance of the

1 contract and affecting the form, fit, and function of the items specified in the  
2 contract and to deliver the revised technical data to an agency within a time  
3 specified in the contract;

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

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

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

### 15 2303. Conflict of interest standards for consultants

16 (a) CONTENT OF REGULATIONS.—The Administrator shall prescribe under this ~~part~~  
17 **division** Government-wide regulations that set forth—

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

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

22 (b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by subsection (a)  
23 apply to—

24 (1) advisory and assistance services provided to the Federal Government to the  
25 extent necessary to identify and evaluate the potential for conflicts of interest that  
26 could be prejudicial to the interests of the United States;

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

31 (3) other services related to Federal contracts as specified in the regulations  
32 prescribed under subsection (a) to the extent necessary to identify and evaluate the  
33 potential for conflicts of interest that could be prejudicial to the interests of the  
34 United States.

35 (c) INTELLIGENCE ACTIVITIES EXEMPTION.—

36 (1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as defined in  
37 section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in  
38 any successor order may be exempt from the regulations required by subsection (a).

39 (2) REPORT.—The Director of ~~Central~~ **National** Intelligence shall report to the  
40 Intelligence and Appropriations Committees of Congress each January 1, delineating

1 the activities and organizations that have been exempted under paragraph (1).

2 (d) PRESIDENTIAL DETERMINATION.—Before the regulations required by subsection (a)  
3 are prescribed, the President shall determine if prescribing the regulations will have a  
4 significantly adverse effect on the accomplishment of the mission of the Defense  
5 Department or another Federal agency. If the President determines that the regulations  
6 will have such an adverse effect, the President shall so report to the appropriate  
7 committees of the Senate and the House of Representatives, stating in full the reasons for  
8 the determination. If such a report is submitted, the requirement for the regulations shall  
9 be null and void.

## 10 2304. Authority of Director of Office of Management and 11 Budget not affected

12 This ~~part~~ **division** does not limit the authorities and responsibilities of the Director of  
13 the Office of Management and Budget in effect on December 1, 1983.

## 14 2305. Openness of meetings

15 The Administrator by regulation shall require that—

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

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

## 21 2306. Comptroller General's access to information

22 The Administrator and personnel in the Office of Federal Procurement Policy shall  
23 furnish information the Comptroller General may require to discharge the responsibilities  
24 of the Comptroller General. For this purpose, the Comptroller General or his  
25 representatives shall have access to all books, documents, papers, and records of the  
26 Office of Federal Procurement Policy.

## 27 2307. Modular contracting for information technology

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

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

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

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

1 that—

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

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

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

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

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

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

## 21 2308. Protection of constitutional rights of contractors

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

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

## 31 2309. Performance-based contracts or task orders for 32 services to be treated as contracts for the procurement of 33 commercial items

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

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

39 (2) the contract or task order sets forth specifically each task to be performed and,

1 for each task—

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

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

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

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

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

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

19 (d) EXPIRATION.—The authority under this section expires 10 years after November  
20 24, 2003.

## 21 **Part Division C—Procurement**

### 22 **CHAPTER 31—GENERAL**

23 Sec.

24 3101.Applicability.

25 3102.Delegation and assignment of powers, functions, and responsibilities.

26 3103.Acquisition programs.

27 3104.Small business concerns.

28 3105.New contracts and grants and merit-based selection procedures.

29 3106.Erection, repair, or furnishing of public buildings and improvements not  
30 authorized, and certain contracts not permitted, by this **part division**.

#### 31 **3101.Applicability**

32 (a) IN GENERAL.—An executive agency shall make purchases and contracts for  
33 property and services in accordance with this **part division** and implementing regulations  
34 of the Administrator of General Services.

35 (b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

36 (1) SIMPLIFIED ACQUISITION THRESHOLD.—

1 (A) DEFINITION.—For purposes of an acquisition by an executive agency, the  
2 simplified acquisition threshold is as specified in section 134 of this title.

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

7 (2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition procedures  
8 contained in the Federal Acquisition Regulation pursuant to section 1901 of this title  
9 apply in executive agencies as provided in section 1901.

10 (c) EXCEPTIONS.—

11 (1) IN GENERAL.—This ~~part~~ **division** does not apply—

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

14 (B) except as provided in paragraph (2), when this ~~part~~ **division** is made  
15 inapplicable pursuant to law.

16 (2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING, OPENING OF BIDS,  
17 AND LENGTH OF CONTRACT.—Sections 6101, 6103, and 6304 of this title do not  
18 apply to the procurement of property or services made by an executive agency  
19 pursuant to this ~~part~~ **division**. However, when this ~~part~~ **division** is made inapplicable  
20 by any law, sections 6101 and 6103 of this title apply in the absence of authority  
21 conferred by statute to procure without advertising or without regard to section 6101  
22 of this title. A law that authorizes an executive agency (other than an executive  
23 agency exempted from this ~~part~~ **division** by this subsection) to procure property or  
24 services without advertising or without regard to section 6101 of this title is deemed  
25 to authorize the procurement pursuant to the provisions of this ~~part~~ **division** relating  
26 to procedures other than sealed-bid procedures.

## 27 3102. Delegation and assignment of powers, functions, and 28 responsibilities

29 (a) IN GENERAL.—Except to the extent expressly prohibited by another law, the head  
30 of an executive agency may delegate to another officer or official of that agency any  
31 power under this ~~part~~ **division**.

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

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

39 (2) the heads of 2 or more executive agencies, consistent with section 1535 of title  
40 31 and regulations prescribed under section 1074 of the Federal Acquisition

1 Streamlining Act of 1994 (Public Law 103–355, 31 U.S.C. 1535 note), may by  
2 agreement delegate procurement functions and assign procurement responsibilities  
3 from one executive agency to another of those executive agencies or to an officer or  
4 civilian employee of another of those executive agencies; and

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

### 7 3103.Acquisition programs

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

11 (b) ESTABLISHMENT OF GOALS.—

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

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

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

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

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

### 25 3104.Small business concerns

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

### 29 3105.New contracts and grants and merit-based selection 30 procedures

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

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

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

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

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

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

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

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

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

10 (1) refers to this section;

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

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

14 (d) EXCEPTION.—This section does not apply to a contract or grant that calls on the  
15 National Academy of Sciences to investigate, examine, or experiment on a subject of  
16 science or art of significance to an executive agency and to report on those matters to  
17 Congress or an agency of the Federal Government.

18 **3106.Erection, repair, or furnishing of public buildings and**  
19 **improvements not authorized, and certain contracts not**  
20 **permitted, by this ~~part~~ division**

21 This ~~part~~ division does not—

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

24 (2) permit a contract for the construction or repair of a building, road, sidewalk,  
25 sewer, main, or similar item using procedures other than sealed-bid procedures  
26 under section 3301(b)(1)(A) of this title if the conditions set forth in section  
27 3301(b)(1)(A) of this title apply or the contract is to be performed outside the United  
28 States.

29 **CHAPTER 33—PLANNING AND SOLICITATION**

30 Sec.

31 3301.Full and open competition.

32 3302.Exclusion of particular source or restriction of solicitation to small business  
33 concerns.

34 3303.Use of noncompetitive procedures.

35 3304.Simplified procedures for small purchases.

36 3305.Planning and solicitation requirements.

1 3306.Preference for commercial items.

2 3307.Planning for future competition in contracts for major systems.

3 3308.Design-build selection procedures.

4 3309.Quantities to order.

5 3310.Qualification requirement.

## 6 3301.Full and open competition

7 (a) IN GENERAL.—Except as provided in sections 3302, 3303(a), and 3304 of this title  
8 and except in the case of procurement procedures otherwise expressly authorized by  
9 statute, an executive agency in conducting a procurement for property or services shall—

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

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

15 (b) APPROPRIATE COMPETITIVE PROCEDURES.—

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

18 (A) solicit sealed bids if—

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

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

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

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

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

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

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

## 35 3302.Exclusion of particular source or restriction of 36 solicitation to small business concerns

1 (a) EXCLUSION OF PARTICULAR SOURCE.—

2 (1) CRITERIA FOR EXCLUSION.—An executive agency may provide for the  
3 procurement of property or services covered by section 3301 of this title using  
4 competitive procedures but excluding a particular source to establish or maintain an  
5 alternative source of supply for that property or service if the agency head  
6 determines that to do so would—

7 (A) increase or maintain competition and likely result in reduced overall cost  
8 for the procurement, or for an anticipated procurement, of the property or  
9 services;

10 (B) be in the interest of national defense in having a facility (or a producer,  
11 manufacturer, or other supplier) available for furnishing the property or service  
12 in case of a national emergency or industrial mobilization;

13 (C) be in the interest of national defense in establishing or maintaining an  
14 essential engineering, research, or development capability to be provided by an  
15 educational or other nonprofit institution or a Federally funded research and  
16 development center;

17 (D) ensure the continuous availability of a reliable source of supply of the  
18 property or service;

19 (E) satisfy projected needs for the property or service determined on the  
20 basis of a history of high demand for the property or service; or

21 (F) satisfy a critical need for medical, safety, or emergency supplies.

22 (2) DETERMINATION FOR CLASS DISALLOWED.—A determination under paragraph  
23 (1) may not be made for a class of purchases or contracts.

24 (b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An executive agency  
25 may provide for the procurement of property or services covered by section 3301 of this  
26 title using competitive procedures, but excluding other than small business concerns in  
27 furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

28 (c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIREMENTS.—A contract  
29 awarded pursuant to the competitive procedures referred to in subsections (a) and (b) is  
30 not subject to the justification and approval required by section 3303(d)(1) of this title.

31 **3303. Use of noncompetitive procedures**

32 (a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An executive agency may  
33 use procedures other than competitive procedures only when—

34 (1) the property or services needed by the executive agency are available from  
35 only one responsible source and no other type of property or services will satisfy the  
36 needs of the executive agency;

37 (2) the executive agency's need for the property or services is of such an unusual  
38 and compelling urgency that the Federal Government would be seriously injured  
39 unless the executive agency is permitted to limit the number of sources from which  
40 it solicits bids or proposals;

1 (3) it is necessary to award the contract to a particular source—

2 (A) to maintain a facility, producer, manufacturer, or other supplier available  
3 for furnishing property or services in case of a national emergency or to  
4 achieve industrial mobilization;

5 (B) to establish or maintain an essential engineering, research, or  
6 development capability to be provided by an educational or other nonprofit  
7 institution or a Federally funded research and development center;

8 (C) to procure the services of an expert for use, in any litigation or dispute  
9 (including any reasonably foreseeable litigation or dispute) involving the  
10 Federal Government, in any trial, hearing, or proceeding before a court,  
11 administrative tribunal, or agency, whether or not the expert is expected to  
12 testify; or

13 (D) to procure the services of an expert or neutral for use in any part of an  
14 alternative dispute resolution or negotiated rulemaking process, whether or not  
15 the expert is expected to testify;

16 (4) the terms of an international agreement or treaty between the Federal  
17 Government and a foreign government or an international organization, or the  
18 written directions of a foreign government reimbursing the executive agency for the  
19 cost of the procurement of the property or services for that government, have the  
20 effect of requiring the use of procedures other than competitive procedures;

21 (5) subject to section 3105 of this title, a statute expressly authorizes or requires  
22 that the procurement be made through another executive agency or from a specified  
23 source, or the agency's need is for a brand-name commercial item for authorized  
24 resale;

25 (6) the disclosure of the executive agency's needs would compromise the national  
26 security unless the agency is permitted to limit the number of sources from which it  
27 solicits bids or proposals; or

28 (7) the head of the executive agency (who may not delegate the authority under  
29 this paragraph)—

30 (A) determines that it is necessary in the public interest to use procedures  
31 other than competitive procedures in the particular procurement concerned; and

32 (B) notifies Congress in writing of that determination not less than 30 days  
33 before the award of the contract.

34 (b) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE SOURCE.—For the  
35 purposes of subsection (a)(1), in the case of—

36 (1) a contract for property or services to be awarded on the basis of acceptance of  
37 an unsolicited research proposal, the property or services are deemed to be available  
38 from only one source if the source has submitted an unsolicited research proposal  
39 that demonstrates a unique and innovative concept, the substance of which is not  
40 otherwise available to the Federal Government and does not resemble the substance  
41 of a pending competitive procurement; or

1 (2) a follow-on contract for the continued development or production of a major  
2 system or highly specialized equipment, the property may be deemed to be available  
3 only from the original source and may be procured through procedures other than  
4 competitive procedures when it is likely that award to a source other than the  
5 original source would result in—

6 (A) substantial duplication of cost to the Federal Government that is not  
7 expected to be recovered through competition; or

8 (B) unacceptable delay in fulfilling the executive agency's needs.

9 (c) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency using procedures  
10 other than competitive procedures to procure property or services by reason of the  
11 application of paragraph (2) or (6) of subsection (a) shall request offers from as many  
12 potential sources as is practicable under the circumstances.

13 (d) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

14 (1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided in paragraphs  
15 (4) and (5), an executive agency may not award a contract using procedures other  
16 than competitive procedures unless—

17 (A) the contracting officer for the contract justifies the use of those  
18 procedures in writing and certifies the accuracy and completeness of the  
19 justification;

20 (B) the justification is approved, in the case of a contract for an amount—

21 (i) exceeding \$500,000 but equal to or less than \$10,000,000, by the  
22 advocate for competition for the procuring activity (without further  
23 delegation) or by an official referred to in clause (ii) or (iii);

24 (ii) exceeding \$10,000,000 but equal to or less than \$50,000,000, by the  
25 head of the procuring activity or by a delegate who, if a member of the  
26 armed forces, is a general or flag officer or, if a civilian, is serving in a  
27 position in which the individual is entitled to receive the daily equivalent  
28 of the maximum annual rate of basic pay payable under section 5376 of  
29 title 5 (or in a comparable or higher position under another schedule); or

30 (iii) exceeding \$50,000,000, by the senior procurement executive of the  
31 agency designated pursuant to section 1702(c) of this title (without further  
32 delegation); and

33 (C) any required notice has been published with respect to the contract  
34 pursuant to section 1707 of this title and the executive agency has considered  
35 all bids or proposals received in response to that notice.

36 (2) ELEMENTS OF JUSTIFICATION.—The justification required by paragraph (1)(A)  
37 shall include—

38 (A) a description of the agency's needs;

39 (B) an identification of the statutory exception from the requirement to use  
40 competitive procedures and a demonstration, based on the proposed

1 contractor's qualifications or the nature of the procurement, of the reasons for  
2 using that exception;

3 (C) a determination that the anticipated cost will be fair and reasonable;

4 (D) a description of the market survey conducted or a statement of the  
5 reasons a market survey was not conducted;

6 (E) a listing of any sources that expressed in writing an interest in the  
7 procurement; and

8 (F) a statement of any actions the agency may take to remove or overcome a  
9 barrier to competition before a subsequent procurement for those needs.

10 (3) JUSTIFICATION SUBJECT TO PUBLIC INSPECTION.—The justification required by  
11 paragraph (1)(A) and any related information shall be made available for inspection  
12 by the public consistent with section 552 of title 5.

13 (4) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the case of a  
14 procurement permitted by subsection (a)(2), the justification and approval required  
15 by paragraph (1) may be made after the contract is awarded.

16 (5) JUSTIFICATION NOT REQUIRED.—The justification and approval required by  
17 paragraph (1) are not required if—

18 (A) a statute expressly requires that the procurement be made from a  
19 specified source;

20 (B) the agency's need is for a brand-name commercial item for authorized  
21 resale;

22 (C) the procurement is permitted by subsection (a)(7); or

23 (D) the procurement is conducted under chapter 85 of this title or section  
24 8(a) of the Small Business Act (15 U.S.C. 637(a)).

25 (6) RESTRICTIONS ON EXECUTIVE AGENCIES.—

26 (A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERVICES.—In no case  
27 may an executive agency—

28 (i) enter into a contract for property or services using procedures other  
29 than competitive procedures on the basis of the lack of advance planning  
30 or concerns related to the amount available to the agency for procurement  
31 functions; or

32 (ii) procure property or services from another executive agency unless  
33 the other executive agency complies fully with the requirements of this  
34 ~~part~~ **division** in its procurement of the property or services.

35 (B) ADDITIONAL RESTRICTION.—The restriction set out in subparagraph  
36 (A)(ii) is in addition to any other restriction provided by law.

### 37 3304.Simplified procedures for small purchases

38 (a) AUTHORIZATION.—To promote efficiency and economy in contracting and to avoid

1 unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation  
2 shall provide for special simplified procedures for purchases of property and services for  
3 amounts—

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

5 (2) greater than the simplified acquisition threshold but not greater than  
6 \$5,000,000 for which the contracting officer reasonably expects, based on the nature  
7 of the property or services sought and on market research, that offers will include  
8 only commercial items.

9 (b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of General  
10 Services shall prescribe regulations that provide special simplified procedures for  
11 acquisitions of leasehold interests in real property at rental rates that do not exceed the  
12 simplified acquisition threshold. The rental rate under a multiyear lease does not exceed  
13 the simplified acquisition threshold if the average annual amount of the rent payable for  
14 the period of the lease does not exceed the simplified acquisition threshold.

15 (c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an  
16 amount above the simplified acquisition threshold may not be divided into several  
17 purchases or contracts for lesser amounts to use the simplified procedures required by  
18 subsection (a).

19 (d) PROMOTION OF COMPETITION.—In using the simplified procedures, an executive  
20 agency shall promote competition to the maximum extent practicable.

21 (e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION  
22 REGULATION.—An executive agency shall comply with the Federal Acquisition  
23 Regulation provisions referred to in section 1901(f) of this title.

## 24 3305.Planning and solicitation requirements

25 (a) PLANNING AND SPECIFICATIONS.—

26 (1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property  
27 or services, an executive agency shall—

28 (A) specify its needs and solicit bids or proposals in a manner designed to  
29 achieve full and open competition for the procurement;

30 (B) use advance procurement planning and market research; and

31 (C) develop specifications in the manner necessary to obtain full and open  
32 competition with due regard to the nature of the property or services to be  
33 acquired.

34 (2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under this ~~part~~ **division**  
35 shall include specifications that—

36 (A) consistent with this ~~part~~ **division**, permit full and open competition; and

37 (B) include restrictive provisions or conditions only to the extent necessary  
38 to satisfy the needs of the executive agency or as authorized by law.

39 (3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the

1 type of specification included in a solicitation shall depend on the nature of the  
2 needs of the executive agency and the market available to satisfy those needs.  
3 Subject to those needs, specifications may be stated in terms of—

4 (A) function, so that a variety of products or services may qualify;

5 (B) performance, including specifications of the range of acceptable  
6 characteristics or of the minimum acceptable standards; or

7 (C) design requirements.

8 (b) CONTENTS OF SOLICITATION.—In addition to the specifications described in  
9 subsection (a), each solicitation for sealed bids or competitive proposals (other than for a  
10 procurement for commercial items using special simplified procedures or a purchase for  
11 an amount not greater than the simplified acquisition threshold) shall at a minimum  
12 include—

13 (1) a statement of—

14 (A) all significant factors and subfactors that the executive agency  
15 reasonably expects to consider in evaluating sealed bids (including price) or  
16 competitive proposals (including cost or price, cost-related or price-related  
17 factors and subfactors, and noncost-related or nonprice-related factors and  
18 subfactors); and

19 (B) the relative importance assigned to each of those factors and subfactors;  
20 and

21 (2)(A) in the case of sealed bids—

22 (i) a statement that sealed bids will be evaluated without discussions with the  
23 bidders; and

24 (ii) the time and place for the opening of the sealed bids; or

25 (B) in the case of competitive proposals—

26 (i) either a statement that the proposals are intended to be evaluated with, and  
27 the award made after, discussions with the offerors, or a statement that the  
28 proposals are intended to be evaluated, and the award made, without  
29 discussions with the offerors (other than discussions conducted for the purpose  
30 of minor clarification) unless discussions are determined to be necessary; and

31 (ii) the time and place for submission of proposals.

32 (c) EVALUATION FACTORS.—

33 (1) IN GENERAL.—In prescribing the evaluation factors to be included in each  
34 solicitation for competitive proposals, an executive agency shall—

35 (A) establish clearly the relative importance assigned to the evaluation  
36 factors and subfactors, including the quality of the product or services to be  
37 provided (including technical capability, management capability, prior  
38 experience, and past performance of the offeror);

39 (B) include cost or price to the Federal Government as an evaluation factor

1 that must be considered in the evaluation of proposals; and

2 (C) disclose to offerors whether all evaluation factors other than cost or  
3 price, when combined, are—

4 (i) significantly more important than cost or price;

5 (ii) approximately equal in importance to cost or price; or

6 (iii) significantly less important than cost or price.

7 (2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations implementing  
8 paragraph (1)(C) may not define the terms “significantly more important” and  
9 “significantly less important” as specific numeric weights that would be applied  
10 uniformly to all solicitations or a class of solicitations.

11 (d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not prohibit an  
12 executive agency from—

13 (1) providing additional information in a solicitation, including numeric weights  
14 for all evaluation factors and subfactors on a case-by-case basis; or

15 (2) stating in a solicitation that award will be made to the offeror that meets the  
16 solicitation’s mandatory requirements at the lowest cost or price.

17 (e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive agency, in  
18 issuing a solicitation for a contract to be awarded using sealed bid procedures, may not  
19 include in the solicitation a clause providing for the evaluation of prices for options to  
20 purchase additional property or services under the contract unless the executive agency  
21 has determined that there is a reasonable likelihood that the options will be exercised.

22 (f) Authorization of Telecommuting for Federal Contractors.—

23 (1) DEFINITION.—In this subsection, the term “executive agency” has the meaning  
24 given that term in section 133 of this title.

25 (2) FEDERAL ACQUISITION REGULATION TO ALLOW TELECOMMUTING.—The  
26 Federal Acquisition Regulation issued in accordance with sections 1121(b) and  
27 1303(a)(1) of this title shall permit telecommuting by employees of Federal  
28 Government contractors in the performance of contracts entered into with executive  
29 agencies.

30 (3) SCOPE OF ALLOWANCE.—The Federal Acquisition Regulation at a minimum  
31 shall provide that a solicitation for the acquisition of property or services may not set  
32 forth any requirement or evaluation criteria that would—

33 (A) render an offeror ineligible to enter into a contract on the basis of the  
34 inclusion of a plan of the offeror to allow the offeror’s employees to  
35 telecommute, unless the contracting officer concerned first determines that the  
36 requirements of the agency, including security requirements, cannot be met if  
37 telecommuting is allowed and documents in writing the basis for the  
38 determination; or

39 (B) reduce the scoring of an offer on the basis of the inclusion in the offer of  
40 a plan of the offeror to allow the offeror’s employees to telecommute, unless

1 the contracting officer concerned first determines that the requirements of the  
2 agency, including security requirements, would be adversely impacted if  
3 telecommuting is allowed and documents in writing the basis for the  
4 determination.

## 5 3306. Preference for commercial items

6 (a) RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COMMERCIAL ITEMS.—

7 (1) ~~THIS PART.~~—~~UNLESS~~ **DIVISION.**—**Unless** otherwise specifically provided, all  
8 other provisions in this ~~part~~ **division** also apply to the procurement of commercial  
9 items.

10 (2) LAWS LISTED IN FEDERAL ACQUISITION REGULATION.—A contract for the  
11 procurement of a commercial item entered into by the head of an executive agency  
12 is not subject to a law properly listed in the Federal Acquisition Regulation pursuant  
13 to section 1906 of this title.

14 (b) PREFERENCE.—The head of each executive agency shall ensure that, to the  
15 maximum extent practicable—

16 (1) requirements of the executive agency with respect to a procurement of  
17 supplies or services are stated in terms of—

18 (A) functions to be performed;

19 (B) performance required; or

20 (C) essential physical characteristics;

21 (2) those requirements are defined so that commercial items or, to the extent that  
22 commercial items suitable to meet the executive agency's needs are not available,  
23 nondevelopmental items other than commercial items may be procured to fulfill  
24 those requirements; and

25 (3) offerors of commercial items and nondevelopmental items other than  
26 commercial items are provided an opportunity to compete in any procurement to fill  
27 those requirements.

28 (c) IMPLEMENTATION.—The head of each executive agency shall ensure that  
29 procurement officials in that executive agency, to the maximum extent practicable—

30 (1) acquire commercial items or nondevelopmental items other than commercial  
31 items to meet the needs of the executive agency;

32 (2) require that prime contractors and subcontractors at all levels under contracts  
33 of the executive agency incorporate commercial items or nondevelopmental items  
34 other than commercial items as components of items supplied to the executive  
35 agency;

36 (3) modify requirements in appropriate cases to ensure that the requirements can  
37 be met by commercial items or, to the extent that commercial items suitable to meet  
38 the executive agency's needs are not available, nondevelopmental items other than  
39 commercial items;

1 (4) state specifications in terms that enable and encourage bidders and offerors to  
2 supply commercial items or, to the extent that commercial items suitable to meet the  
3 executive agency's needs are not available, nondevelopmental items other than  
4 commercial items in response to the executive agency solicitations;

5 (5) revise the executive agency's procurement policies, practices, and procedures  
6 not required by law to reduce any impediments in those policies, practices, and  
7 procedures to the acquisition of commercial items; and

8 (6) require training of appropriate personnel in the acquisition of commercial  
9 items.

10 (d) MARKET RESEARCH.—

11 (1) WHEN TO BE USED.—The head of an executive agency shall conduct market  
12 research appropriate to the circumstances—

13 (A) before developing new specifications for a procurement by that  
14 executive agency; and

15 (B) before soliciting bids or proposals for a contract in excess of the  
16 simplified acquisition threshold.

17 (2) USE OF RESULTS.—The head of an executive agency shall use the results of  
18 market research to determine whether commercial items or, to the extent that  
19 commercial items suitable to meet the executive agency's needs are not available,  
20 nondevelopmental items other than commercial items are available that—

21 (A) meet the executive agency's requirements;

22 (B) could be modified to meet the executive agency's requirements; or

23 (C) could meet the executive agency's requirements if those requirements  
24 were modified to a reasonable extent.

25 (3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—In conducting  
26 market research, the head of an executive agency should not require potential  
27 sources to submit more than the minimum information that is necessary to make the  
28 determinations required in paragraph (2).

29 (e) REGULATIONS.—

30 (1) IN GENERAL.—The Federal Acquisition Regulation shall provide regulations to  
31 implement this section, sections 102, 103, 105, and 110 of this title, and chapter 140  
32 of title 10.

33 (2) CONTRACT CLAUSES.—

34 (A) DEFINITION.—In this paragraph, the term “subcontract” includes a  
35 transfer of commercial items between divisions, subsidiaries, or affiliates of a  
36 contractor or subcontractor.

37 (B) LIST OF CLAUSES TO BE INCLUDED.—The regulations prescribed under  
38 paragraph (1) shall contain a list of contract clauses to be included in contracts  
39 for the acquisition of commercial end items. To the maximum extent  
40 practicable, the list shall include only those contract clauses that are—

1 (i) required to implement provisions of law or executive orders  
2 applicable to acquisitions of commercial items or commercial  
3 components; or

4 (ii) determined to be consistent with standard commercial practice.

5 (C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations shall provide  
6 that the Federal Government shall not require a prime contractor to apply to  
7 any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are  
8 furnishing commercial items any contract clause except those that are—

9 (i) required to implement provisions of law or executive orders  
10 applicable to subcontractors furnishing commercial items or commercial  
11 components; or

12 (ii) determined to be consistent with standard commercial practice.

13 (D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the maximum extent  
14 practicable, only the contract clauses listed pursuant to subparagraph (B) may  
15 be used in a contract, and only the contract clauses referred to in subparagraph  
16 (C) may be required to be used in a subcontract, for the acquisition of  
17 commercial items or commercial components by or for an executive agency.

18 (E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition Regulation  
19 shall provide standards and procedures for waiving the use of contract clauses  
20 required pursuant to subparagraph (B), other than those required by law,  
21 including standards for determining the cases in which a waiver is appropriate.

22 (3) MARKET ACCEPTANCE.—

23 (A) REQUIREMENT OF OFFERORS.—The Federal Acquisition Regulation shall  
24 provide that under appropriate conditions the head of an executive agency may  
25 require offerors to demonstrate that the items offered—

26 (i) have achieved commercial market acceptance or been satisfactorily  
27 supplied to an executive agency under current or recent contracts for the  
28 same or similar requirements; and

29 (ii) otherwise meet the item description, specifications, or other criteria  
30 prescribed in the public notice and solicitation relating to the contract.

31 (B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The Federal  
32 Acquisition Regulation shall provide guidance to ensure that the criteria for  
33 determining commercial market acceptance include the consideration of—

34 (i) the minimum needs of the executive agency concerned; and

35 (ii) the entire relevant commercial market, including small businesses.

36 (4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

37 (A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal Acquisition  
38 Regulation shall include, for acquisitions of commercial items—

39 (i) a requirement that firm, fixed price contracts or fixed price with  
40 economic price adjustment contracts be used to the maximum extent

1           practicable;

2           (ii) a prohibition on use of cost type contracts; and

3           (iii) subject to subparagraph (B), authority for use of a time-and-  
4 materials or labor-hour contract for the procurement of commercial  
5 services that are commonly sold to the general public through those  
6 contracts and are purchased by the procuring agency on a competitive  
7 basis.

8           (B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT MAY BE  
9 USED.—A time-and-materials or labor-hour contract may be used pursuant to  
10 the authority referred to in subparagraph (A)(iii)—

11           (i) only for a procurement of commercial services in a category of  
12 commercial services described in subparagraph (C); and

13           (ii) only if the contracting officer for the procurement—

14           (I) executes a determination and findings that no other contract  
15 type is suitable;

16           (II) includes in the contract a ceiling price that the contractor  
17 exceeds at its own risk; and

18           (III) authorizes a subsequent change in the ceiling price only on a  
19 determination, documented in the contract file, that it is in the best  
20 interest of the procuring agency to change the ceiling price.

21           (C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of commercial  
22 services referred to in subparagraph (B) are as follows:

23           (i) Commercial services procured for support of a commercial item, as  
24 described in section 103(5) of this title.

25           (ii) Any other category of commercial services that the Administrator  
26 for Federal Procurement Policy designates in the Federal Acquisition  
27 Regulation for the purposes of this subparagraph on the basis that—

28           (I) the commercial services in the category are of a type of  
29 commercial services that are commonly sold to the general public  
30 through use of time-and-materials or labor-hour contracts; and

31           (II) it would be in the best interests of the Federal Government to  
32 authorize use of time-and-materials or labor-hour contracts for  
33 purchases of the commercial services in the category.

34           (5) CONTRACT QUALITY REQUIREMENTS.—Regulations prescribed under  
35 paragraph (1) shall include provisions that—

36           (A) allow, to the maximum extent practicable, a contractor under a  
37 commercial items acquisition to use the existing quality assurance system of  
38 the contractor as a substitute for compliance with an otherwise applicable  
39 requirement for the Federal Government to inspect or test the commercial items  
40 before the contractor's tender of those items for acceptance by the Federal

1 Government;

2 (B) require that, to the maximum extent practicable, the executive agency  
3 take advantage of warranties (including extended warranties) offered by  
4 offerors of commercial items and use those warranties for the repair and  
5 replacement of commercial items; and

6 (C) set forth guidance regarding the use of past performance of commercial  
7 items and sources as a factor in contract award decisions.

## 8 3307.Planning for future competition in contracts for major 9 systems

### 10 (a) DEVELOPMENT CONTRACT.—

11 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a  
12 solicitation for the award of a development contract for a major system, the head of  
13 an agency shall consider requiring in the solicitation that an offeror include in its  
14 offer proposals described in paragraph (2). In determining whether to require the  
15 proposals, the head of the agency shall consider the purposes for which the system is  
16 being procured and the technology necessary to meet the system’s required  
17 capabilities. If the proposals are required, the head of the agency shall consider them  
18 in evaluating the offeror’s price.

19 (2) CONTENTS OF PROPOSALS.—The proposals that the head of an agency is to  
20 consider requiring in a solicitation for the award of a development contract are the  
21 following:

22 (A) Proposals to incorporate in the design of the major system items that are  
23 currently available within the supply system of the Federal agency responsible  
24 for the major system, available elsewhere in the national supply system, or  
25 commercially available from more than one source.

26 (B) With respect to items that are likely to be required in substantial  
27 quantities during the system’s service life, proposals to incorporate in the  
28 design of the major system items that the Federal Government will be able to  
29 acquire competitively in the future.

### 30 (b) PRODUCTION CONTRACT.—

31 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a  
32 solicitation for the award of a production contract for a major system, the head of an  
33 agency shall consider requiring in the solicitation that an offeror include in its offer  
34 proposals described in paragraph (2). In determining whether to require the  
35 proposals, the head of the agency shall consider the purposes for which the system is  
36 being procured and the technology necessary to meet the system’s required  
37 capabilities. If the proposals are required, the head of the agency shall consider them  
38 in evaluating the offeror’s price.

39 (2) CONTENT OF PROPOSALS.—The proposals that the head of an agency is to  
40 consider requiring in a solicitation for the award of a production contract are  
41 proposals identifying opportunities to ensure that the Federal Government will be

1 able to obtain on a competitive basis items procured in connection with the system  
2 that are likely to be reprocured in substantial quantities during the service life of the  
3 system. Proposals submitted in response to this requirement may include the  
4 following:

5 (A) Proposals to provide to the Federal Government the right to use technical  
6 data to be provided under the contract for competitive reprocurement of the  
7 item, together with the cost to the Federal Government of acquiring the data  
8 and the right to use the data.

9 (B) Proposals for the qualification or development of multiple sources of  
10 supply for the item.

11 (c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—If the head of an  
12 agency is making a noncompetitive award of a development contract or a production  
13 contract for a major system, the factors specified in subsections (a) and (b) to be  
14 considered in evaluating an offer for a contract may be considered as objectives in  
15 negotiating the contract to be awarded.

## 16 3308.Design-build selection procedures

17 (a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build  
18 established under sections 1101 to 1104 of title 40 or another acquisition procedure  
19 authorized by law is used, the head of an executive agency shall use the two-phase  
20 selection procedures authorized in this section for entering into a contract for the design  
21 and construction of a public building, facility, or work when a determination is made  
22 under subsection (b) that the procedures are appropriate for use.

23 (b) CRITERIA FOR USE.—A contracting officer shall make a determination whether  
24 two-phase selection procedures are appropriate for use for entering into a contract for the  
25 design and construction of a public building, facility, or work when—

26 (1) the contracting officer anticipates that 3 or more offers will be received for the  
27 contract;

28 (2) design work must be performed before an offeror can develop a price or cost  
29 proposal for the contract;

30 (3) the offeror will incur a substantial amount of expense in preparing the offer;  
31 and

32 (4) the contracting officer has considered information such as the following:

33 (A) The extent to which the project requirements have been adequately  
34 defined.

35 (B) The time constraints for delivery of the project.

36 (C) The capability and experience of potential contractors.

37 (D) The suitability of the project for use of the two-phase selection  
38 procedures.

39 (E) The capability of the agency to manage the two-phase selection process.

1 (F) Other criteria established by the agency.

2 (c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the  
3 following:

4 (1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either  
5 in-house or by contract, a scope of work statement for inclusion in the solicitation  
6 that defines the project and provides prospective offerors with sufficient information  
7 regarding the Federal Government’s requirements (which may include criteria and  
8 preliminary design, budget parameters, and schedule or delivery requirements) to  
9 enable the offerors to submit proposals that meet the Federal Government’s needs. If  
10 the agency contracts for development of the scope of work statement, the agency  
11 shall contract for architectural and engineering services as defined by and in  
12 accordance with sections 1101 to 1104 of title 40.

13 (2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits  
14 phase-one proposals that—

15 (A) include information on the offeror’s—

16 (i) technical approach; and

17 (ii) technical qualifications; and

18 (B) do not include—

19 (i) detailed design information; or

20 (ii) cost or price information.

21 (3) EVALUATION FACTORS.—The evaluation factors to be used in evaluating  
22 phase-one proposals are stated in the solicitation and include specialized experience  
23 and technical competence, capability to perform, past performance of the offeror’s  
24 team (including the architect-engineer and construction members of the team), and  
25 other appropriate factors, except that cost-related or price-related evaluation factors  
26 are not permitted. Each solicitation establishes the relative importance assigned to  
27 the evaluation factors and subfactors that must be considered in the evaluation of  
28 phase-one proposals. The agency evaluates phase-one proposals on the basis of the  
29 phase-one evaluation factors set forth in the solicitation.

30 (4) SELECTION BY CONTRACTING OFFICER.—

31 (A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—The  
32 contracting officer selects as the most highly qualified the number of offerors  
33 specified in the solicitation to provide the property or services under the  
34 contract and requests the selected offerors to submit phase-two competitive  
35 proposals that include technical proposals and cost or price information. Each  
36 solicitation establishes with respect to phase two—

37 (i) the technical submission for the proposal, including design concepts  
38 or proposed solutions to requirements addressed within the scope of work,  
39 or both; and

40 (ii) the evaluation factors and subfactors, including cost or price, that

1 must be considered in the evaluations of proposals in accordance with  
2 subsections (b) to (d) of section 3305 of this title.

3 (B) SEPARATE EVALUATIONS.—The contracting officer separately evaluates  
4 the submissions described in clauses (i) and (ii) of subparagraph (A).

5 (5) AWARDING OF CONTRACT.—The agency awards the contract in accordance  
6 with chapter 37 of this title.

7 (d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE-TWO  
8 REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the  
9 procedures described in subsection (c) shall state the maximum number of offerors that  
10 are to be selected to submit competitive proposals pursuant to subsection (c)(4). The  
11 maximum number specified in the solicitation shall not exceed 5 unless the agency  
12 determines with respect to an individual solicitation that a specified number greater than  
13 5 is in the Federal Government’s interest and is consistent with the purposes and  
14 objectives of the two-phase selection process.

15 (e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition  
16 Regulation shall include guidance—

17 (1) regarding the factors that may be considered in determining whether the two-  
18 phase contracting procedures authorized by subsection (a) are appropriate for use in  
19 individual contracting situations;

20 (2) regarding the factors that may be used in selecting contractors; and

21 (3) providing for a uniform approach to be used Government-wide.

## 22 3309. Quantities to order

23 (a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency shall procure  
24 supplies in a quantity that—

25 (1) will result in the total cost and unit cost most advantageous to the Federal  
26 Government, where practicable; and

27 (2) does not exceed the quantity reasonably expected to be required by the  
28 agency.

29 (b) OFFEROR’S OPINION OF QUANTITY.—Each solicitation for a contract for supplies  
30 shall, if practicable, include a provision inviting each offeror responding to the  
31 solicitation to state an opinion on whether the quantity of supplies proposed to be  
32 procured is economically advantageous to the Federal Government and, if applicable, to  
33 recommend a quantity that would be more economically advantageous to the Federal  
34 Government. Each recommendation shall include a quotation of the total price and the  
35 unit price for supplies procured in each recommended quantity.

## 36 3310. Qualification requirement

37 (a) DEFINITION.—In this section, the term “qualification requirement” means a  
38 requirement for testing or other quality assurance demonstration that must be completed  
39 by an offeror before award of a contract.

1 (b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Except as provided  
2 in subsection (c), the head of an agency, before enforcing any qualification requirement,  
3 shall—

4 (1) prepare a written justification stating the necessity for establishing the  
5 qualification requirement and specify why the qualification requirement must be  
6 demonstrated before contract award;

7 (2) specify in writing and make available to a potential offeror on request all  
8 requirements that a prospective offeror, or its product, must satisfy to become  
9 qualified, with those requirements to be limited to those least restrictive to meet the  
10 purposes necessitating the establishment of the qualification requirement;

11 (3) specify an estimate of the cost of testing and evaluation likely to be incurred  
12 by a potential offeror to become qualified;

13 (4) ensure that a potential offeror is provided, on request, a prompt opportunity to  
14 demonstrate at its own expense (except as provided in subsection (d)) its ability to  
15 meet the standards specified for qualification using—

16 (A) qualified personnel and facilities—

17 (i) of the agency concerned;

18 (ii) of another agency obtained through interagency agreement; or

19 (iii) under contract; or

20 (B) other methods approved by the agency (including use of approved testing  
21 and evaluation services not provided under contract to the agency);

22 (5) if testing and evaluation services are provided under contract to the agency for  
23 the purposes of paragraph (4), provide to the extent possible that those services be  
24 provided by a contractor that—

25 (A) is not expected to benefit from an absence of additional qualified  
26 sources; and

27 (B) is required in the contract to adhere to any restriction on technical data  
28 asserted by the potential offeror seeking qualification; and

29 (6) ensure that a potential offeror seeking qualification is promptly informed  
30 whether qualification is attained and, if not attained, is promptly furnished specific  
31 information about why qualification was not attained.

32 (c) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

33 (1) APPLICABILITY.—Subsection (b) does not apply to a qualification requirement  
34 established by statute prior to October 30, 1984.

35 (2) WAIVER AUTHORITY.—

36 (A) SUBMISSION OF DETERMINATION OF UNREASONABLENESS.—Except as  
37 provided in subparagraph (C), if it is unreasonable to specify the standards for  
38 qualification that a prospective offeror or its product must satisfy, a  
39 determination to that effect shall be submitted to the advocate for competition

1 of the procuring activity responsible for the purchase of the item subject to the  
2 qualification requirement.

3 (B) AUTHORITY TO GRANT WAIVER.—After considering any comments of the  
4 advocate for competition reviewing the determination, the head of the  
5 procuring activity may waive the requirements of paragraphs (2) to (5) of  
6 subsection (b) for up to 2 years with respect to the item subject to the  
7 qualification requirement.

8 (C) NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—Waiver authority  
9 under this paragraph does not apply with respect to a qualified products list.

10 (3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED.—A potential  
11 offeror may not be denied the opportunity to submit and have considered an offer for  
12 a contract solely because the potential offeror has not been identified as meeting a  
13 qualification requirement if the potential offeror can demonstrate to the satisfaction  
14 of the contracting officer that the potential offeror or its product meets the standards  
15 established for qualification or can meet those standards before the date specified for  
16 award of the contract.

17 (4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT REQUIRED.—This  
18 subsection does not require the referral of an offer to the Small Business  
19 Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C.  
20 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the  
21 validity of the qualification requirement or the offeror's compliance with that  
22 requirement.

23 (5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an agency need not  
24 delay a proposed procurement to comply with subsection (b) or to provide a  
25 potential offeror with an opportunity to demonstrate its ability to meet the standards  
26 specified for qualification.

27 (d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

28 (1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PRODUCTS.—If the  
29 number of qualified sources or qualified products available to compete actively for  
30 an anticipated future requirement is fewer than 2 actual manufacturers or the  
31 products of 2 actual manufacturers, respectively, the head of the agency concerned  
32 shall—

33 (A) publish notice periodically soliciting additional sources or products to  
34 seek qualification, unless the contracting officer determines that doing so  
35 would compromise national security; and

36 (B) subject to paragraph (2), bear the cost of conducting the specified testing  
37 and evaluation (excluding the cost associated with producing the item or  
38 establishing the production, quality control, or other system to be tested and  
39 evaluated) for a small business concern or a product manufactured by a small  
40 business concern that has met the standards specified for qualification and that  
41 could reasonably be expected to compete for a contract for that requirement.

42 (2) WHEN AGENCY MAY BEAR COST.—The head of the agency concerned may bear

1 the cost under paragraph (1)(B) only if the head of the agency determines that the  
2 additional qualified sources or products are likely to result in cost savings from  
3 increased competition for future requirements sufficient to offset (within a  
4 reasonable period of time considering the duration and dollar value of anticipated  
5 future requirements) the cost incurred by the agency.

6 (3) CERTIFICATION REQUIRED.—The head of the agency shall require a  
7 prospective contractor requesting the Federal Government to bear testing and  
8 evaluation costs under paragraph (1)(B) to certify its status as a small business  
9 concern under section 3 of the Small Business Act (15 U.S.C. 632).

10 (e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within 7  
11 years after the establishment of a qualification requirement, the need for the requirement  
12 shall be examined and the standards of the requirement revalidated in accordance with  
13 the requirements of subsection (b). This subsection does not apply in the case of a  
14 qualification requirement for which a waiver is in effect under subsection (c)(2).

15 (f) WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT ALLOWED.—Except  
16 in an emergency as determined by the head of the agency, after the head of the agency  
17 determines not to enforce a qualification requirement for a solicitation, the agency may  
18 not enforce the requirement unless the agency complies with the requirements of  
19 subsection (b).

## 20 CHAPTER 35—TRUTHFUL COST AND PRICING 21 DATA

22 Sec.

23 3501.Definitions.

24 3502.Required cost or pricing data and certification.

25 3503.Exceptions.

26 3504.Cost or pricing data on below-threshold contracts.

27 3505.Submission of other information.

28 3506.Price reductions for defective cost or pricing data.

29 3507.Interest and penalties for certain overpayments.

30 3508.Right to examine contractor records.

### 31 3501.Definitions

32 In this chapter:

33 (1) COMMERCIAL ITEM.—The term “commercial item” has the meaning provided  
34 the term by section 103 of this title.

35 (2) COST OR PRICING DATA.—The term “cost or pricing data” means all facts that,  
36 as of the date of agreement on the price of a contract (or the price of a contract  
37 modification) or, if applicable consistent with section 3506(a)(2) of this title, another  
38 date agreed upon between the parties, a prudent buyer or seller would reasonably

1 expect to affect price negotiations significantly. The term does not include  
2 information that is judgmental, but does include factual information from which a  
3 judgment was derived.

4 (3) SUBCONTRACT.—The term “subcontract” includes a transfer of commercial  
5 items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

## 6 3502.Required cost or pricing data and certification

7 (a) WHEN REQUIRED.—The head of an executive agency shall require offerors,  
8 contractors, and subcontractors to make cost or pricing data available as follows:

9 (1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under this  
10 ~~part~~ **division** to be entered into using procedures other than sealed-bid procedures  
11 shall be required to submit cost or pricing data before the award of a contract if—

12 (A) in the case of a prime contract entered into after October 13, 1994, the  
13 price of the contract to the Federal Government is expected to exceed  
14 \$500,000; and

15 (B) in the case of a prime contract entered into on or before October 13,  
16 1994, the price of the contract to the Federal Government is expected to exceed  
17 \$100,000.

18 (2) CONTRACTOR.—The contractor for a prime contract under this ~~part~~ **division**  
19 shall be required to submit cost or pricing data before the pricing of a change or  
20 modification to the contract if—

21 (A) in the case of a change or modification made to a prime contract referred  
22 to in paragraph (1)(A), the price adjustment is expected to exceed \$500,000;

23 (B) in the case of a change or modification made to a prime contract that was  
24 entered into on or before October 13, 1994, and that has been modified  
25 pursuant to subsection (f), the price adjustment is expected to exceed \$500,000;  
26 and

27 (C) in the case of a change or modification not covered by subparagraph (A)  
28 or (B), the price adjustment is expected to exceed \$100,000.

29 (3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at any tier) of a  
30 contract under this ~~part~~ **division** shall be required to submit cost or pricing data  
31 before the award of the subcontract if the prime contractor and each higher-tier  
32 subcontractor have been required to make available cost or pricing data under this  
33 chapter and—

34 (A) in the case of a subcontract under a prime contract referred to in  
35 paragraph (1)(A), the price of the subcontract is expected to exceed \$500,000;

36 (B) in the case of a subcontract entered into under a prime contract that was  
37 entered into on or before October 13, 1994, and that has been modified  
38 pursuant to subsection (f), the price of the subcontract is expected to exceed  
39 \$500,000; and

40 (C) in the case of a subcontract not covered by subparagraph (A) or (B), the

1 price of the subcontract is expected to exceed \$100,000.

2 (4) SUBCONTRACTOR.—The subcontractor for a subcontract covered by paragraph  
3 (3) shall be required to submit cost or pricing data before the pricing of a change or  
4 modification to the subcontract if—

5 (A) in the case of a change or modification to a subcontract referred to in  
6 paragraph (3)(A) or (B), the price adjustment is expected to exceed \$500,000;  
7 and

8 (B) in the case of a change or modification to a subcontract referred to in  
9 paragraph (3)(C), the price adjustment is expected to exceed \$100,000.

10 (b) CERTIFICATION.—A person required, as an offeror, contractor, or subcontractor, to  
11 submit cost or pricing data under subsection (a) (or required by the head of the procuring  
12 activity concerned to submit the data under section 3504 of this title) shall be required to  
13 certify that, to the best of the person's knowledge and belief, the cost or pricing data  
14 submitted are accurate, complete, and current.

15 (c) TO WHOM SUBMITTED.—Cost or pricing data required to be submitted under  
16 subsection (a) (or under section 3504 of this title), and a certification required to be  
17 submitted under subsection (b), shall be submitted—

18 (1) in the case of a submission by a prime contractor (or an offeror for a prime  
19 contract), to the contracting officer for the contract (or a designated representative of  
20 the contracting officer); or

21 (2) in the case of a submission by a subcontractor (or an offeror for a subcontract),  
22 to the prime contractor.

23 (d) APPLICATION OF CHAPTER.—Except as provided under section 3503 of this title,  
24 this chapter applies to contracts entered into by the head of an executive agency on behalf  
25 of a foreign government.

26 (e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of requirements for  
27 submission of certified cost or pricing data that is granted under section 3503(a)(3) of this  
28 title in the case of a contract or subcontract does not waive the requirement under  
29 subsection (a)(3) of this section for submission of cost or pricing data in the case of  
30 subcontracts under that contract or subcontract unless the head of the procuring activity  
31 granting the waiver determines that the requirement under subsection (a)(3) of this  
32 section should be waived in the case of those subcontracts and justifies in writing the  
33 reason for the determination.

34 (f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a contractor that was  
35 required to submit cost or pricing data under subsection (a) in connection with a prime  
36 contract entered into on or before October 13, 1994, the head of the executive agency that  
37 entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B)  
38 of subsection (a). All those modifications shall be made without requiring consideration.

39 (g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year that is divisible  
40 by 5, each amount set forth in subsection (a) shall be adjusted to the amount that is equal  
41 to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so  
42 adjusted, that is not evenly divisible by \$50,000 shall be rounded to the nearest multiple

1 of \$50,000. In the case of an amount that is evenly divisible by \$25,000 but not evenly  
2 divisible by \$50,000, the amount shall be rounded to the next higher multiple of \$50,000.

### 3 3503.Exceptions

4 (a) IN GENERAL.—Submission of certified cost or pricing data shall not be required  
5 under section 3502 of this title in the case of a contract, a subcontract, or a modification  
6 of a contract or subcontract—

7 (1) for which the price agreed on is based on—

8 (A) adequate price competition; or

9 (B) prices set by law or regulation;

10 (2) for the acquisition of a commercial item; or

11 (3) in an exceptional case when the head of the procuring activity, without  
12 delegation, determines that the requirements of this chapter may be waived and  
13 justifies in writing the reasons for the determination.

14 (b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In  
15 the case of a modification of a contract or subcontract for a commercial item that is not  
16 covered by the exception to the submission of certified cost or pricing data in paragraph  
17 (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be  
18 required under section 3502 of this title if—

19 (1) the contract or subcontract being modified is a contract or subcontract for  
20 which submission of certified cost or pricing data may not be required by reason of  
21 paragraph (1) or (2) of subsection (a); and

22 (2) the modification would not change the contract or subcontract from a contract  
23 or subcontract for the acquisition of a commercial item to a contract or subcontract  
24 for the acquisition of an item other than a commercial item.

### 25 3504.Cost or pricing data on below-threshold contracts

26 (a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified  
27 cost or pricing data are not required to be submitted by section 3502 of this title for a  
28 contract, subcontract, or modification of a contract or subcontract, the data may  
29 nevertheless be required to be submitted by the head of the procuring activity, but only if  
30 the head of the procuring activity determines that the data are necessary for the evaluation  
31 by the agency of the reasonableness of the price of the contract, subcontract, or  
32 modification of a contract or subcontract. In any case in which the head of the procuring  
33 activity requires the data to be submitted under this section, the head of the procuring  
34 activity shall justify in writing the reason for the requirement.

35 (b) EXCEPTION.—The head of the procuring activity may not require certified cost or  
36 pricing data to be submitted under this section for any contract or subcontract, or  
37 modification of a contract or subcontract, covered by the exceptions in section 3503(a)(1)  
38 or (2) of this title.

39 (c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may

1 not delegate the functions under this section.

## 2 3505.Submission of other information

3 (a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not  
4 required to be submitted under this chapter for a contract, subcontract, or modification of  
5 a contract or subcontract, the contracting officer shall require submission of data other  
6 than certified cost or pricing data to the extent necessary to determine the reasonableness  
7 of the price of the contract, subcontract, or modification of the contract or subcontract.  
8 Except in the case of a contract or subcontract covered by the exceptions in section  
9 3503(a)(1) of this title, the contracting officer shall require that the data submitted  
10 include, at a minimum, appropriate information on the prices at which the same item or  
11 similar items have previously been sold that is adequate for evaluating the reasonableness  
12 of the price for the procurement.

13 (b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include  
14 the following provisions regarding the types of information that contracting officers may  
15 require under subsection (a):

16 (1) REASONABLE LIMITATIONS.—Reasonable limitations on requests for sales data  
17 relating to commercial items.

18 (2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a contracting officer  
19 limit, to the maximum extent practicable, the scope of any request for information  
20 relating to commercial items from an offeror to only that information that is in the  
21 form regularly maintained by the offeror in commercial operations.

22 (3) INFORMATION NOT TO BE DISCLOSED.—A statement that any information  
23 received relating to commercial items that is exempt from disclosure under section  
24 552(b) of title 5 shall not be disclosed by the Federal Government.

## 25 3506.Price reductions for defective cost or pricing data

26 (a) PROVISION REQUIRING ADJUSTMENT.—

27 (1) IN GENERAL.—A prime contract (or change or modification to a prime  
28 contract) under which a certificate under section 3502(b) of this title is required shall  
29 contain a provision that the price of the contract to the Federal Government,  
30 including profit or fee, shall be adjusted to exclude any significant amount by which  
31 it may be determined by the head of the executive agency that the price was  
32 increased because the contractor (or any subcontractor required to make the  
33 certificate available) submitted defective cost or pricing data.

34 (2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of  
35 this chapter, defective cost or pricing data are cost or pricing data that, as of the date  
36 of agreement on the price of the contract (or another date agreed on between the  
37 parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding  
38 sentence the parties agree on a date other than the date of agreement on the price of  
39 the contract, the date agreed on by the parties shall be as close to the date of  
40 agreement on the price of the contract as is practicable.

41 (b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under

1 a contract provision required by subsection (a) whether, and to what extent, a contract  
2 price was increased because the contractor (or a subcontractor) submitted defective cost  
3 or pricing data, it is a defense that the Federal Government did not rely on the defective  
4 data submitted by the contractor or subcontractor.

5 (c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract  
6 under a contract provision required by subsection (a) that—

7 (1) the price of the contract would not have been modified even if accurate,  
8 complete, and current cost or pricing data had been submitted by the contractor or  
9 subcontractor because the contractor or subcontractor—

10 (A) was the sole source of the property or services procured; or

11 (B) otherwise was in a superior bargaining position with respect to the  
12 property or services procured;

13 (2) the contracting officer should have known that the cost or pricing data in issue  
14 were defective even though the contractor or subcontractor took no affirmative  
15 action to bring the character of the data to the attention of the contracting officer;

16 (3) the contract was based on an agreement between the contractor and the  
17 Federal Government about the total cost of the contract and there was no agreement  
18 about the cost of each item procured under the contract; or

19 (4) the prime contractor or subcontractor did not submit a certification of cost or  
20 pricing data relating to the contract as required by section 3502(b) of this title.

21 (d) OFFSETS.—

22 (1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against  
23 the amount of a contract price adjustment under a contract provision required by  
24 subsection (a) if—

25 (A) the contractor certifies to the contracting officer (or to a designated  
26 representative of the contracting officer) that, to the best of the contractor's  
27 knowledge and belief, the contractor is entitled to the offset; and

28 (B) the contractor proves that the cost or pricing data were available before  
29 the date of agreement on the price of the contract (or price of the modification),  
30 or, if applicable, consistent with subsection (a)(2), another date agreed on by  
31 the parties, and that the data were not submitted as specified in section 3502(c)  
32 of this title before that date.

33 (2) WHEN NOT ALLOWED.—A contractor shall not be allowed to offset an amount  
34 otherwise authorized to be offset under paragraph (1) if—

35 (A) the certification under section 3502(b) of this title with respect to the  
36 cost or pricing data involved was known to be false when signed; or

37 (B) the Federal Government proves that, had the cost or pricing data referred  
38 to in paragraph (1)(B) been submitted to the Federal Government before date of  
39 agreement on the price of the contract (or price of the modification), or, if  
40 applicable, under subsection (a)(2), another date agreed on by the parties, the

1 submission of the cost or pricing data would not have resulted in an increase in  
2 that price in the amount to be offset.

### 3 3507. Interest and penalties for certain overpayments

4 (a) IN GENERAL.—If the Federal Government makes an overpayment to a contractor  
5 under a contract with an executive agency subject to this chapter and the overpayment  
6 was due to the submission by the contractor of defective cost or pricing data, the  
7 contractor shall be liable to the Federal Government—

8 (1) for interest on the amount of the overpayment, to be computed—

9 (A) for the period beginning on the date the overpayment was made to the  
10 contractor and ending on the date the contractor repays the amount of the  
11 overpayment to the Federal Government; and

12 (B) at the current rate prescribed by the Secretary of the Treasury under  
13 section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621); and

14 (2) if the submission of the defective data was a knowing submission, for an  
15 additional amount equal to the amount of the overpayment.

16 (b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.—Any liability  
17 under this section of a contractor that submits cost or pricing data but refuses to submit  
18 the certification required by section 3502(b) of this title with respect to the cost or pricing  
19 data is not affected by the refusal to submit the certification.

### 20 3508. Right to examine contractor records

21 For the purpose of evaluating the accuracy, completeness, and currency of cost or  
22 pricing data required to be submitted by this chapter, an executive agency shall have the  
23 authority provided by section 4706(b)(2) of this title.

## 24 CHAPTER 37—AWARDING OF CONTRACTS

25 Sec.

26 3701. Basis of award and rejection.

27 3702. Sealed bids.

28 3703. Competitive proposals.

29 3704. Post-award debriefings.

30 3705. Pre-award debriefings.

31 3706. Encouragement of alternative dispute resolution.

32 3707. Antitrust violations.

33 3708. Protests.

### 34 3701. Basis of award and rejection

35 (a) AWARD.—An executive agency shall evaluate sealed bids and competitive

1 proposals, and award a contract, based solely on the factors specified in the solicitation.

2 (b) REJECTION.—All sealed bids or competitive proposals received in response to a  
3 solicitation may be rejected if the agency head determines that rejection is in the public  
4 interest.

## 5 3702.Sealed bids

6 (a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place  
7 stated in the solicitation.

8 (b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall evaluate the  
9 bids in accordance with section 3701(a) of this title without discussions with the bidders  
10 and, except as provided in section 3701(b) of this title, shall award a contract with  
11 reasonable promptness to the responsible source whose bid conforms to the solicitation  
12 and is most advantageous to the Federal Government, considering only price and the  
13 other price-related factors included in the solicitation.

14 (c) NOTICE OF AWARD.—The award of a contract shall be made by transmitting, in  
15 writing or by electronic means, notice of the award to the successful bidder. Within 3  
16 days after the date of contract award, the executive agency shall notify, in writing or by  
17 electronic means, each bidder not awarded the contract that the contract has been  
18 awarded.

## 19 3703.Competitive proposals

20 (a) EVALUATION AND AWARD.—An executive agency shall evaluate competitive  
21 proposals in accordance with section 3701(a) of this title and may award a contract—

22 (1) after discussions with the offerors, provided that written or oral discussions  
23 have been conducted with all responsible offerors who submit proposals within the  
24 competitive range; or

25 (2) based on the proposals received and without discussions with the offerors  
26 (other than discussions conducted for the purpose of minor clarification), if, as  
27 required by section 3305(b)(2)(B)(i) of this title, the solicitation included a statement  
28 that proposals are intended to be evaluated, and award made, without discussions  
29 unless discussions are determined to be necessary.

30 (b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the  
31 number of offerors that would otherwise be included in the competitive range under  
32 subsection (a)(1) exceeds the number at which an efficient competition can be conducted,  
33 the contracting officer may limit the number of proposals in the competitive range, in  
34 accordance with the criteria specified in the solicitation, to the greatest number that will  
35 permit an efficient competition among the offerors rated most highly in accordance with  
36 those criteria.

37 (c) CRITERIA FOR AWARDING CONTRACT.—Except as otherwise provided in section  
38 3701(b) of this title, the executive agency shall award a contract with reasonable  
39 promptness to the responsible source whose proposal is most advantageous to the Federal  
40 Government, considering only cost or price and the other factors included in the  
41 solicitation.

1 (d) NOTICE OF AWARD.—The executive agency shall award the contract by  
2 transmitting, in writing or by electronic means, notice of the award to that source and,  
3 within 3 days after the date of contract award, shall notify, in writing or by electronic  
4 means, all other offerors of the rejection of their proposals.

## 5 3704. Post-award debriefings

6 (a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an  
7 executive agency on the basis of competitive proposals, an unsuccessful offeror, on  
8 written request received by the agency within 3 days after the date on which the  
9 unsuccessful offeror receives the notification of the contract award, shall be debriefed  
10 and furnished the basis for the selection decision and contract award.

11 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall debrief the  
12 offeror within, to the maximum extent practicable, 5 days after receipt of the request by  
13 the executive agency.

14 (c) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a minimum—

15 (1) the executive agency's evaluation of the significant weak or deficient factors  
16 in the offeror's offer;

17 (2) the overall evaluated cost and technical rating of the offer of the contractor  
18 awarded the contract and the overall evaluated cost and technical rating of the offer  
19 of the debriefed offeror;

20 (3) the overall ranking of all offers;

21 (4) a summary of the rationale for the award;

22 (5) in the case of a proposal that includes a commercial item that is an end item  
23 under the contract, the make and model of the item being provided in accordance  
24 with the offer of the contractor awarded the contract; and

25 (6) reasonable responses to relevant questions posed by the debriefed offeror as to  
26 whether source selection procedures set forth in the solicitation, applicable  
27 regulations, and other applicable authorities were followed by the executive agency.

28 (d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not include point-by-  
29 point comparisons of the debriefed offeror's offer with other offers and may not disclose  
30 any information that is exempt from disclosure under section 552(b) of title 5.

31 (e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for competitive  
32 proposals shall include a statement that information described in subsection (c) may be  
33 disclosed in post-award debriefings.

34 (f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of the contract  
35 award and as a result of a successful procurement protest, the executive agency seeks to  
36 fulfill the requirement under the protested contract either on the basis of a new  
37 solicitation of offers or on the basis of new best and final offers requested for that  
38 contract, the head of the executive agency shall make available to all offerors—

39 (1) the information provided in debriefings under this section regarding the offer  
40 of the contractor awarded the contract; and

1 (2) the same information that would have been provided to the original offerors.

2 (g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a  
3 summary of the debriefing in the contract file.

## 4 3705.Pre-award debriefings

5 (a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror  
6 submitting a competitive proposal from the competitive range (or otherwise excludes that  
7 offeror from further consideration prior to the final source selection decision), the  
8 excluded offeror may request in writing, within 3 days after the date on which the  
9 excluded offeror receives notice of its exclusion, a debriefing prior to award.

10 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every  
11 effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request  
12 for a debriefing if it is not in the best interests of the Federal Government to conduct a  
13 debriefing at that time.

14 (c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required  
15 to debrief an excluded offeror in accordance with section 3704 of this title only if that  
16 offeror requested and was refused a pre-award debriefing under subsections (a) and (b).

17 (d) INFORMATION TO BE PROVIDED.—The debriefing conducted under this section  
18 shall include—

19 (1) the executive agency's evaluation of the significant elements in the offeror's  
20 offer;

21 (2) a summary of the rationale for the offeror's exclusion; and

22 (3) reasonable responses to relevant questions posed by the debriefed offeror as to  
23 whether source selection procedures set forth in the solicitation, applicable  
24 regulations, and other applicable authorities were followed by the executive agency.

25 (e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted pursuant to this  
26 section may not disclose the number or identity of other offerors and shall not disclose  
27 information about the content, ranking, or evaluation of other offerors' proposals.

28 (f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a  
29 summary of the debriefing in the contract file.

## 30 3706.Encouragement of alternative dispute resolution

31 The Federal Acquisition Regulation shall include a provision encouraging the use of  
32 alternative dispute resolution techniques to provide informal, expeditious, and  
33 inexpensive procedures for an offeror to consider using before filing a protest, prior to the  
34 award of a contract, of the exclusion of the offeror from the competitive range (or  
35 otherwise from further consideration) for that contract.

## 36 3707.Antitrust violations

37 If the agency head considers that a bid or proposal evidences a violation of the antitrust  
38 laws, the agency head shall refer the bid or proposal to the Attorney General for

1 appropriate action.

## 2 3708. Protests

3 (a) PROTEST FILE.—

4 (1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract  
5 issued by, or an award or proposed award of a contract by, the head of an executive  
6 agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of  
7 title 31, and an actual or prospective offeror requests, a file of the protest shall be  
8 established by the procuring activity and reasonable access shall be provided to  
9 actual or prospective offerors.

10 (2) REDACTED INFORMATION.—Information exempt from disclosure under section  
11 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless  
12 an applicable protective order provides otherwise.

13 (b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an  
14 executive agency determines that a solicitation, proposed award, or award does not  
15 comply with the requirements of law or regulation, the head of the executive agency  
16 may—

17 (1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of  
18 section 3554 of title 31; and

19 (2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the  
20 limits referred to in paragraph (2) of section 3554(c).

## 21 CHAPTER 39—SPECIFIC TYPES OF CONTRACTS

22 Sec.

23 3901. Contracts awarded using procedures other than sealed-bid procedures.

24 3902. Severable services contracts for periods crossing fiscal years.

25 3903. Multiyear contracts.

26 3904. Contract authority for severable services contracts and multiyear contracts.

27 3905. Cost contracts.

### 28 3901. Contracts awarded using procedures other than 29 sealed-bid procedures

30 (a) AUTHORIZED TYPES.—Except as provided in section 3905 of this title, contracts  
31 awarded after using procedures other than sealed-bid procedures may be of any type  
32 which in the opinion of the agency head will promote the best interests of the Federal  
33 Government.

34 (b) REQUIRED WARRANTY.—

35 (1) CONTENT.—Every contract awarded after using procedures other than sealed-  
36 bid procedures shall contain a suitable warranty, as determined by the agency head,  
37 by the contractor that no person or selling agency has been employed or retained to

1 solicit or secure the contract on an agreement or understanding for a commission,  
2 percentage, brokerage, or contingent fee, except for bona fide employees or bona  
3 fide established commercial or selling agencies the contractor maintains to secure  
4 business.

5 (2) REMEDY FOR BREACH OR VIOLATION.—For the breach or violation of the  
6 warranty, the Federal Government may annul the contract without liability or deduct  
7 from the contract price or consideration the full amount of the commission,  
8 percentage, brokerage, or contingent fee.

9 (3) NONAPPLICATION.—Paragraph (1) does not apply to a contract for an amount  
10 that is not greater than the simplified acquisition threshold or to a contract for the  
11 acquisition of commercial items.

## 12 3902. Severable services contracts for periods crossing 13 fiscal years

14 (a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive agency may  
15 enter into a contract for the procurement of severable services for a period that begins in  
16 one fiscal year and ends in the next fiscal year if (without regard to any option to extend  
17 the period of the contract) the contract period does not exceed one year.

18 (b) OBLIGATION OF AMOUNTS.—Amounts made available for a fiscal year may be  
19 obligated for the total amount of a contract entered into under the authority of this  
20 section.

## 21 3903. Multiyear contracts

22 (a) DEFINITION.—In this section, a multiyear contract is a contract for the purchase of  
23 property or services for more than one, but not more than 5, program years.

24 (b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may enter into a  
25 multiyear contract for the acquisition of property or services if—

26 (1) amounts are available and obligated for the contract, for the full period of the  
27 contract or for the first fiscal year in which the contract is in effect, and for the  
28 estimated costs associated with a necessary termination of the contract; and

29 (2) the executive agency determines that—

30 (A) the need for the property or services is reasonably firm and continuing  
31 over the period of the contract; and

32 (B) a multiyear contract will serve the best interests of the Federal  
33 Government by encouraging full and open competition or promoting economy  
34 in administration, performance, and operation of the agency's programs.

35 (c) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of  
36 this section shall include a clause that provides that the contract shall be terminated if  
37 amounts are not made available for the continuation of the contract in a fiscal year  
38 covered by the contract. Amounts available for paying termination costs shall remain  
39 available for that purpose until the costs associated with termination of the contract are

1 paid.

2 (d) CANCELLATION CEILING NOTICE.—Before a contract described in subsection (b)  
3 that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000 may be  
4 awarded, the executive agency shall give written notification of the proposed contract and  
5 of the proposed cancellation ceiling for that contract to Congress. The contract may not  
6 be awarded until the end of the 30-day period beginning on the date of the notification.

7 (e) CONTINGENCY CLAUSE FOR APPROPRIATION OF AMOUNTS.—A multiyear contract  
8 may provide that performance under the contract after the first year of the contract is  
9 contingent on the appropriation of amounts and (if the contract does so provide) that a  
10 cancellation payment shall be made to the contractor if the amounts are not appropriated.

11 (f) OTHER LAW NOT AFFECTED.—This section does not modify or affect any other  
12 provision of law that authorizes multiyear contracts.

### 13 3904.Contract authority for severable services contracts 14 and multiyear contracts

15 (a) COMPTROLLER GENERAL.—The Comptroller General may use available amounts to  
16 enter into contracts for the procurement of severable services for a period that begins in  
17 one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for  
18 the acquisition of property and nonaudit-related services to the same extent as executive  
19 agencies under sections 3902 and 3903 of this title.

20 (b) LIBRARY OF CONGRESS.—The Library of Congress may use available amounts to  
21 enter into contracts for the lease or procurement of severable services for a period that  
22 begins in one fiscal year and ends in the next fiscal year and to enter into multiyear  
23 contracts for the acquisition of property and services pursuant to sections 3902 and 3903  
24 of this title.

25 (c) CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.—The Chief  
26 Administrative Officer of the House of Representatives may enter into—

27 (1) contracts for the procurement of severable services for a period that begins in  
28 one fiscal year and ends in the next fiscal year to the same extent as the head of an  
29 executive agency under the authority of section 3902 of this title; and

30 (2) multiyear contracts for the acquisitions of property and nonaudit-related  
31 services to the same extent as executive agencies under the authority of section 3903  
32 of this title.

33 (d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office may use  
34 available amounts to enter into contracts for the procurement of severable services for a  
35 period that begins in one fiscal year and ends in the next fiscal year and may enter into  
36 multiyear contracts for the acquisition of property and services to the same extent as  
37 executive agencies under the authority of sections 3902 and 3903 of this title.

38 (e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE.—Subject  
39 to regulations prescribed by the Committee on Rules and Administration of the Senate,  
40 the Secretary and the Sergeant at Arms and Doorkeeper of the Senate may enter into—

1 (1) contracts for the procurement of severable services for a period that begins in  
2 one fiscal year and ends in the next fiscal year to the same extent and under the same  
3 conditions as the head of an executive agency under the authority of section 3902 of  
4 this title; and

5 (2) multiyear contracts for the acquisition of property and services to the same  
6 extent and under the same conditions as executive agencies under the authority of  
7 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 that begins in  
10 one fiscal year and ends in the next fiscal year to the same extent as the head of an  
11 executive agency under the authority of section 3902 of this title; and

12 (2) multiyear contracts for the acquisitions of property and nonaudit-related  
13 services to the same extent as executive agencies under the authority of section 3903  
14 of this title.

15 (g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may enter into—

16 (1) contracts for the procurement of severable services for a period that begins in  
17 one fiscal year and ends in the next fiscal year to the same extent as the head of an  
18 executive agency under the authority of section 3902 of this title; and

19 (2) multiyear contracts for the acquisitions of property and nonaudit-related  
20 services to the same extent as executive agencies under the authority of section 3903  
21 of this title.

22 (h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of the Smithsonian  
23 Institution may enter into—

24 (1) contracts for the procurement of severable services for a period that begins in  
25 one fiscal year and ends in the next fiscal year under the authority of section 3902 of  
26 this title; and

27 (2) multiyear contracts for the acquisition of property and services under the  
28 authority of section 3903 of this title.

## 29 3905. Cost contracts

30 (a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—The cost-plus-a-  
31 percentage-of-cost system of contracting shall not be used.

32 (b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

33 (1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the fee in a cost-  
34 plus-a-fixed-fee contract shall not exceed 10 percent of the estimated cost of the  
35 contract, not including the fee, as determined by the agency head at the time of  
36 entering into the contract.

37 (2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The fee in a cost-  
38 plus-a-fixed-fee contract for experimental, developmental, or research work shall  
39 not exceed 15 percent of the estimated cost of the contract, not including the fee.

1 (3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a cost-plus-a-fixed-  
2 fee contract for architectural or engineering services relating to any public works or  
3 utility project may include the contractor’s costs and shall not exceed 6 percent of  
4 the estimated cost, not including the fee, as determined by the agency head at the  
5 time of entering into the contract, of the project to which the fee applies.

6 (c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall provide for  
7 advance notification by the contractor to the procuring agency of any subcontract on a  
8 cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which  
9 exceeds in dollar amount either the simplified acquisition threshold or 5 percent of the  
10 total estimated cost of the prime contract.

11 (d) RIGHT TO AUDIT.—A procuring agency, through any authorized representative  
12 thereof, has the right to inspect the plans and to audit the books and records of a prime  
13 contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee  
14 contract.

## 15 CHAPTER 41—TASK AND DELIVERY ORDER 16 CONTRACTS

17 Sec.

18 4101.Definitions.

19 4102.Authorities or responsibilities not affected.

20 4103.General authority.

21 4104.Guidance on use of task and delivery order contracts.

22 4105.Advisory and assistance services.

23 4106.Orders.

### 24 4101.Definitions

25 In this chapter:

26 (1) DELIVERY ORDER CONTRACT.—The term “delivery order contract” means a  
27 contract for property that—

28 (A) does not procure or specify a firm quantity of property (other than a  
29 minimum or maximum quantity); and

30 (B) provides for the issuance of orders for the delivery of property during the  
31 period of the contract.

32 (2) TASK ORDER CONTRACT.—The term “task order contract” means a contract for  
33 services that—

34 (A) does not procure or specify a firm quantity of services (other than a  
35 minimum or maximum quantity); and

36 (B) provides for the issuance of orders for the performance of tasks during  
37 the period of the contract.

1 4102. Authorities or responsibilities not affected

2 This chapter does not modify or supersede, and is not intended to impair or restrict,  
3 authorities or responsibilities under sections 1101 to 1104 of title 40.

4 4103. General authority

5 (a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 4106  
6 of this title, and other applicable law, the head of an executive agency may enter into a  
7 task or delivery order contract for procurement of services or property.

8 (b) SOLICITATION.—The solicitation for a task or delivery order contract shall  
9 include—

10 (1) the period of the contract, including the number of options to extend the  
11 contract and the period for which the contract may be extended under each option;

12 (2) the maximum quantity or dollar value of the services or property to be  
13 procured under the contract; and

14 (3) a statement of work, specifications, or other description that reasonably  
15 describes the general scope, nature, complexity, and purposes of the services or  
16 property to be procured under the contract.

17 (c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The  
18 head of an executive agency may use procedures other than competitive procedures to  
19 enter into a task or delivery order contract under this section only if an exception in  
20 section 3303(a) of this title applies to the contract and the use of those procedures is  
21 approved in accordance with section 3303(d) of this title.

22 (d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

23 (1) EXERCISE OF AUTHORITY.—The head of an executive agency may exercise the  
24 authority provided in this section—

25 (A) to award a single task or delivery order contract; or

26 (B) if the solicitation states that the head of the executive agency has the  
27 option to do so, to award separate task or delivery order contracts for the same  
28 or similar services or property to 2 or more sources.

29 (2) DETERMINATION NOT REQUIRED.—No determination under section 3302 of  
30 this title is required for an award of multiple task or delivery order contracts under  
31 paragraph (1)(B).

32 (3) REGULATIONS.—Regulations implementing this subsection shall establish—

33 (A) a preference for awarding, to the maximum extent practicable, multiple  
34 task or delivery order contracts for the same or similar services or property  
35 under paragraph (1)(B); and

36 (B) criteria for determining when award of multiple task or delivery order  
37 contracts would not be in the best interest of the Federal Government.

38 (e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope,

1 period, or maximum value of the task or delivery order contract under which the order is  
2 issued. The scope, period, or maximum value of the contract may be increased only by  
3 modification of the contract.

4 (f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—  
5 Except as otherwise specifically provided in section 4105 of this title, this section does  
6 not apply to a task or delivery order contract for the acquisition of advisory and  
7 assistance services (as defined in section 1105(g) of title 31).

8 (g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may  
9 be construed to limit or expand any authority of the head of an executive agency or the  
10 Administrator of General Services to enter into schedule, multiple award, or task or  
11 delivery order contracts under any other provision of law.

## 12 4104. Guidance on use of task and delivery order contracts

13 (a) GUIDANCE IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition  
14 Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall  
15 provide guidance to agencies on the appropriate use of task and delivery order contracts  
16 in accordance with this chapter and sections 2304a to 2304d of title 10.

17 (b) CONTENT OF REGULATIONS.—The regulations issued pursuant to subsection (a) at a  
18 minimum shall provide specific guidance on—

19 (1) the appropriate use of Government-wide and other multiagency contracts  
20 entered into in accordance with this chapter and sections 2304a to 2304d of title 10;  
21 and

22 (2) steps that agencies should take in entering into and administering multiple  
23 award task and delivery order contracts to ensure compliance with the requirement  
24 in—

25 (A) section 11312 of title 40 for capital planning and investment control in  
26 purchases of information technology products and services;

27 (B) section 4106(c) of this title and section 2304c(b) of title 10 to ensure that  
28 all contractors are afforded a fair opportunity to be considered for the award of  
29 task and delivery orders; and

30 (C) section 4106(d) of this title and section 2304c(c) of title 10 for a  
31 statement of work in each task or delivery order issued that clearly specifies all  
32 tasks to be performed or property to be delivered under the order.

33 (c) FEDERAL SUPPLY SCHEDULES PROGRAM.—The Administrator for Federal  
34 Procurement Policy shall consult with the Administrator of General Services to assess the  
35 effectiveness of the multiple awards schedule program of the General Services  
36 Administration referred to in section 152(3) of this title that is administered as the Federal  
37 Supply Schedules program. The assessment shall include examination of—

38 (1) the administration of the program by the Administrator of General Services;  
39 and

40 (2) the ordering and program practices followed by Federal customer agencies in

1 using schedules established under the program.

## 2 4105. Advisory and assistance services

3 (a) DEFINITION.—In this section, the term “advisory and assistance services” has the  
4 same meaning given that term in section 1105(g) of title 31.

5 (b) AUTHORITY TO AWARD.—

6 (1) IN GENERAL.—Subject to the requirements of this section, section 4106 of this  
7 title, and other applicable law, the head of an executive agency may enter into a task  
8 order contract for procurement of advisory and assistance services.

9 (2) ONLY UNDER THIS SECTION.—The head of an executive agency may enter into  
10 a task order contract for advisory and assistance services only under this section.

11 (c) ~~LIMITATION ON CONTRACT PERIOD.~~—THE CONTRACT PERIOD.—

12 (1) CONTRACT NOT TO EXCEED 5 YEARS.—The period of a task order contract  
13 entered into under this section, including all periods of extensions of the contract  
14 under options, modifications, or otherwise, may not exceed 5 years unless a longer  
15 period is specifically authorized in a law that is applicable to the contract.

16 (2) WAIVER AUTHORITY TO EXTEND CONTRACT.—

17 (A) WHEN WAIVER MAY BE ISSUED.—The head of an executive agency  
18 may issue a waiver to extend a task order contract entered into under this  
19 section for a period not exceeding 10 years, through 5 one-year options, if  
20 the head of the agency determines in writing—

21 (i) that the contract provides engineering or technical services of  
22 such a unique and substantial technical nature that award of a new  
23 contract would be harmful to the continuity of the program for which  
24 the services are performed;

25 (ii) that award of a new contract would create a large disruption in  
26 services provided to the executive agency; and

27 (iii) that the executive agency would, through award of a new  
28 contract, endure program risk during critical program stages due to  
29 loss of program corporate knowledge of ongoing program activities.

30 (B) DELEGATION.—The authority of the head of an executive agency  
31 under subparagraph (A) may be delegated only to the Chief Acquisition  
32 Officer of the agency (or the senior procurement executive in the case of an  
33 agency for which a Chief Acquisition Officer has not been appointed or  
34 designated under section 1702(a) of this title).

35 (C) REPORT.—Not later than April 1, 2007, the Administrator shall  
36 submit to the Committee on Homeland Security and Governmental Affairs  
37 of the Senate and the Committee on Oversight and Government Reform of  
38 the House of Representatives a report on advisory and assistance services.  
39 The report shall include the following information:

1                    **(i) The methods used by executive agencies to identify a contract as**  
2                    **an advisory and assistance services contract, as defined in subsection**  
3                    **(a).**

4                    **(ii) The number of advisory and assistance services contracts**  
5                    **awarded by each executive agency during the 5-year period preceding**  
6                    **October 17, 2006.**

7                    **(iii) The average annual expenditures by each executive agency for**  
8                    **advisory and assistance services contracts.**

9                    **(iv) The average length of advisory and assistance services**  
10                   **contracts.**

11                   **(v) The number of advisory and assistance services contracts**  
12                   **recompeted and awarded to the previous award winner.**

13                   **(D) PROHIBITION ON USE OF AUTHORITY BY EXECUTIVE AGENCIES IF**  
14                   **REPORT NOT SUBMITTED.—The head of an executive agency may not issue a**  
15                   **waiver under subparagraph (A) if the report required by subparagraph**  
16                   **(C) is not submitted by April 1, 2007.**

17                   **(E) TERMINATION OF AUTHORITY.—A waiver may not be issued under**  
18                   **this paragraph after December 31, 2011.**

19                   (d) CONTENT OF NOTICE.—The notice required by section 1707 of this title and section  
20                   8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the  
21                   general scope, magnitude, and duration of the proposed task order contract in a manner  
22                   that would reasonably enable a potential offeror to decide whether to request the  
23                   solicitation and consider submitting an offer.

24                   (e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

25                   (1) SOLICITATION.—The solicitation shall include the information (regarding  
26                   services) described in section 4103(b) of this title.

27                   (2) CONTRACT.—A task order contract entered into under this section shall  
28                   contain the same information that is required by paragraph (1) to be included in the  
29                   solicitation of offers for that contract.

30                   (f) MULTIPLE AWARDS.—

31                   (1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one solicitation,  
32                   the head of an executive agency may award separate task order contracts under this  
33                   section for the same or similar services to 2 or more sources if the solicitation states  
34                   that the head of the executive agency has the option to do so.

35                   (2) CONTENT OF SOLICITATION.—In the case of a task order contract for advisory  
36                   and assistance services to be entered into under this section, if the contract period is  
37                   to exceed 3 years and the contract amount is estimated to exceed \$10,000,000  
38                   (including all options), the solicitation shall—

39                   (A) provide for a multiple award authorized under paragraph (1); and

40                   (B) include a statement that the head of the executive agency may also elect

1 to award only one task order contract if the head of the executive agency  
2 determines in writing that only one of the offerors is capable of providing the  
3 services required at the level of quality required.

4 (3) NONAPPLICATION.—Paragraph (2) does not apply in the case of a solicitation  
5 for which the head of the executive agency concerned determines in writing that,  
6 because the services required under the contract are unique or highly specialized, it  
7 is not practicable to award more than one contract.

8 (g) CONTRACT MODIFICATIONS.—

9 (1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY  
10 MODIFICATION OF CONTRACT.—A task order may not increase the scope, period, or  
11 maximum value of the task order contract under which the order is issued. The  
12 scope, period, or maximum value of the contract may be increased only by  
13 modification of the contract.

14 (2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures other than  
15 competitive procedures is authorized by an exception in section 3303(a) of this title  
16 and approved in accordance with section 3303(d) of this title, competitive  
17 procedures shall be used for making such a modification.

18 (3) NOTICE.—Notice regarding the modification shall be provided in accordance  
19 with section 1707 of this title and section 8(e) of the Small Business Act (15 U.S.C.  
20 637(e)).

21 (h) CONTRACT EXTENSIONS.—

22 (1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the limitation on the  
23 contract period set forth in subsection (c) or in a solicitation or contract pursuant to  
24 subsection (f), a contract entered into by the head of an executive agency under this  
25 section may be extended on a sole-source basis for a period not exceeding 6 months  
26 if the head of the executive agency determines that—

27 (A) the award of a follow-on contract has been delayed by circumstances that  
28 were not reasonably foreseeable at the time the initial contract was entered into;  
29 and

30 (B) the extension is necessary to ensure continuity of the receipt of services  
31 pending the award of, and commencement of performance under, the follow-on  
32 contract.

33 (2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under  
34 paragraph (1) only once and only in accordance with the limitations and  
35 requirements of this subsection.

36 (i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a  
37 contract for the acquisition of property or services that includes acquisition of advisory  
38 and assistance services if the head of the executive agency entering into the contract  
39 determines that, under the contract, advisory and assistance services are necessarily  
40 incident to, and not a significant component of, the contract.

41 4106.Orders

1 (a) APPLICATION.—This section applies to task and delivery order contracts entered  
2 into under sections 4103 and 4105 of this title.

3 (b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following actions are not  
4 required for issuance of a task or delivery order under a task or delivery order contract:

5 (1) A separate notice for the order under section 1707 of this title or section 8(e)  
6 of the Small Business Act (15 U.S.C. 637(e)).

7 (2) Except as provided in subsection (c), a competition (or a waiver of  
8 competition approved in accordance with section 3303(d) of this title) that is  
9 separate from that used for entering into the contract.

10 (c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are awarded under  
11 section 4103(d)(1)(B) or 4105(f) of this title, all contractors awarded the contracts shall  
12 be provided a fair opportunity to be considered, pursuant to procedures set forth in the  
13 contracts, for each task or delivery order in excess of \$2,500 that is to be issued under  
14 any of the contracts, unless—

15 (1) the executive agency's need for the services or property ordered is of such  
16 unusual urgency that providing the opportunity to all of those contractors would  
17 result in unacceptable delays in fulfilling that need;

18 (2) only one of those contractors is capable of providing the services or property  
19 required at the level of quality required because the services or property ordered are  
20 unique or highly specialized;

21 (3) the task or delivery order should be issued on a sole-source basis in the  
22 interest of economy and efficiency because it is a logical follow-on to a task or  
23 delivery order already issued on a competitive basis; or

24 (4) it is necessary to place the order with a particular contractor to satisfy a  
25 minimum guarantee.

26 (d) STATEMENT OF WORK.—A task or delivery order shall include a statement of work  
27 that clearly specifies all tasks to be performed or property to be delivered under the order.

28 (e) PROTESTS.—A protest is not authorized in connection with the issuance or  
29 proposed issuance of a task or delivery order except for a protest on the ground that the  
30 order increases the scope, period, or maximum value of the contract under which the  
31 order is issued.

32 (f) TASK AND DELIVERY ORDER OMBUDSMAN.—

33 (1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The head of each  
34 executive agency who awards multiple task or delivery order contracts under section  
35 4103(d)(1)(B) or 4105(f) of this title shall appoint or designate a task and delivery  
36 order ombudsman who shall be responsible for reviewing complaints from the  
37 contractors on those contracts and ensuring that all of the contractors are afforded a  
38 fair opportunity to be considered for task or delivery orders when required under  
39 subsection (c).

40 (2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior  
41 agency official who is independent of the contracting officer for the contracts and

1           may be the executive agency’s advocate for competition.

## 2   **CHAPTER 43—ALLOWABLE COSTS**

3   Sec.

4       4301.Definitions.

5       4302.Adjustment of threshold amount of covered contract.

6       4303.Effect of submission of unallowable costs.

7       4304.Specific costs not allowable.

8       4305.Required regulations.

9       4306.Applicability of regulations to subcontractors.

10      4307.Contractor certification.

11      4308.Penalties for submission of cost known to be unallowable.

12      4309.Burden of proof on contractor.

13      4310.Proceeding costs not allowable.

### 14   **4301.Definitions**

15       In this chapter:

16           (1) **COMPENSATION.**—The term “compensation”, for a fiscal year, means the total  
17           amount of wages, salary, bonuses, and deferred compensation for the fiscal year,  
18           whether paid, earned, or otherwise accruing, as recorded in an employer’s cost  
19           accounting records for the fiscal year.

20           (2) **COVERED CONTRACT.**—The term “covered contract” means a contract for an  
21           amount in excess of \$500,000 that is entered into by an executive agency, except  
22           that the term does not include a fixed-price contract without cost incentives or any  
23           firm fixed-price contract for the purchase of commercial items.

24           (3) **FISCAL YEAR.**—The term “fiscal year” means a fiscal year established by a  
25           contractor for accounting purposes.

26           (4) **SENIOR EXECUTIVE.**—The term “senior executive”, with respect to a  
27           contractor, means the 5 most highly compensated employees in management  
28           positions at each home office and each segment of the contractor.

### 29   **4302.Adjustment of threshold amount of covered contract**

30       Effective on October 1 of each year that is divisible by 5, the amount set forth in  
31       section 4301(2) of this title shall be adjusted to the equivalent amount in constant fiscal  
32       year 1994 dollars. An adjusted amount that is not evenly divisible by \$50,000 shall be  
33       rounded to the nearest multiple of \$50,000. If an amount is evenly divisible by \$25,000  
34       but is not evenly divisible by \$50,000, the amount shall be rounded to the next higher  
35       multiple of \$50,000.

1 4303. Effect of submission of unallowable costs

2 (a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULATION COST  
3 PRINCIPLE.—An executive agency shall require that a covered contract provide that if the  
4 contractor submits to the executive agency a proposal for settlement of indirect costs  
5 incurred by the contractor for any period after those costs have been accrued and if that  
6 proposal includes the submission of a cost that is unallowable because the cost violates a  
7 cost principle in the Federal Acquisition Regulation or an executive agency supplement  
8 to the Federal Acquisition Regulation, the cost shall be disallowed.

9 (b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

10 (1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency determines that a  
11 cost submitted by a contractor in its proposal for settlement is expressly unallowable  
12 under a cost principle referred to in subsection (a) that defines the allowability of  
13 specific selected costs, the executive agency shall assess a penalty against the  
14 contractor in an amount equal to—

15 (A) the amount of the disallowed cost allocated to covered contracts for  
16 which a proposal for settlement of indirect costs has been submitted; plus

17 (B) interest (to be computed based on provisions in the Federal Acquisition  
18 Regulation) to compensate the Federal Government for the use of the amount  
19 which a contractor has been paid in excess of the amount to which the  
20 contractor was entitled.

21 (2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If  
22 the executive agency determines that a proposal for settlement of indirect costs  
23 submitted by a contractor includes a cost determined to be unallowable in the case of  
24 that contractor before the submission of that proposal, the executive agency shall  
25 assess a penalty against the contractor in an amount equal to 2 times the amount of  
26 the disallowed cost allocated to covered contracts for which a proposal for  
27 settlement of indirect costs has been submitted.

28 (c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a  
29 penalty under subsection (b) to be waived in the case of a contractor's proposal for  
30 settlement of indirect costs when—

31 (1) the contractor withdraws the proposal before the formal initiation of an audit  
32 of the proposal by the Federal Government and resubmits a revised proposal;

33 (2) the amount of unallowable costs subject to the penalty is insignificant; or

34 (3) the contractor demonstrates, to the contracting officer's satisfaction, that—

35 (A) it has established appropriate policies and personnel training and an  
36 internal control and review system that provide assurances that unallowable  
37 costs subject to penalties are precluded from being included in the contractor's  
38 proposal for settlement of indirect costs; and

39 (B) the unallowable costs subject to the penalty were inadvertently  
40 incorporated into the proposal.

1 (d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of an executive  
2 agency under subsection (a) or (b)—

3 (1) shall be considered a final decision for the purposes of section 6903 of this  
4 title; and

5 (2) is appealable in the manner provided in section 6904(a) of this title.

## 6 4304. Specific costs not allowable

7 (a) SPECIFIC COSTS.—The following costs are not allowable under a covered contract:

8 (1) Costs of entertainment, including amusement, diversion, and social activities,  
9 and any costs directly associated with those costs (such as tickets to shows or sports  
10 events, meals, lodging, rentals, transportation, and gratuities).

11 (2) Costs incurred to influence (directly or indirectly) legislative action on any  
12 matter pending before Congress, a State legislature, or a legislative body of a  
13 political subdivision of a State.

14 (3) Costs incurred in defense of any civil or criminal fraud proceeding or similar  
15 proceeding (including filing of any false certification) brought by the Federal  
16 Government where the contractor is found liable or had pleaded nolo contendere to a  
17 charge of fraud or similar proceeding (including filing of a false certification).

18 (4) Payments of fines and penalties resulting from violations of, or failure to  
19 comply with, Federal, State, local, or foreign laws and regulations, except when  
20 incurred as a result of compliance with specific terms and conditions of the contract  
21 or specific written instructions from the contracting officer authorizing in advance  
22 those payments in accordance with applicable provisions of the Federal Acquisition  
23 Regulation.

24 (5) Costs of membership in any social, dining, or country club or organization.

25 (6) Costs of alcoholic beverages.

26 (7) Contributions or donations, regardless of the recipient.

27 (8) Costs of advertising designed to promote the contractor or its products.

28 (9) Costs of promotional items and memorabilia, including models, gifts, and  
29 souvenirs.

30 (10) Costs for travel by commercial aircraft that exceed the amount of the  
31 standard commercial fare.

32 (11) Costs incurred in making any payment (commonly known as a “golden  
33 parachute payment”) that is—

34 (A) in an amount in excess of the normal severance pay paid by the  
35 contractor to an employee on termination of employment; and

36 (B) paid to the employee contingent on, and following, a change in  
37 management control over, or ownership of, the contractor or a substantial  
38 portion of the contractor’s assets.

1 (12) Costs of commercial insurance that protects against the costs of the  
2 contractor for correction of the contractor's own defects in materials or  
3 workmanship.

4 (13) Costs of severance pay paid by the contractor to foreign nationals employed  
5 by the contractor under a service contract performed outside the United States, to the  
6 extent that the amount of severance pay paid in any case exceeds the amount paid in  
7 the industry involved under the customary or prevailing practice for firms in that  
8 industry providing similar services in the United States, as determined under the  
9 Federal Acquisition Regulation.

10 (14) Costs of severance pay paid by the contractor to a foreign national employed  
11 by the contractor under a service contract performed in a foreign country if the  
12 termination of the employment of the foreign national is the result of the closing of,  
13 or the curtailment of activities at, a Federal Government facility in that country at  
14 the request of the government of that country.

15 (15) Costs incurred by a contractor in connection with any criminal, civil, or  
16 administrative proceeding commenced by the Federal Government or a State, to the  
17 extent provided in section 4310 of this title.

18 (16) Costs of compensation of senior executives of contractors for a fiscal year,  
19 regardless of the contract funding source, to the extent that the compensation  
20 exceeds the benchmark compensation amount determined applicable for the fiscal  
21 year by the Administrator under section 1127 of this title.

22 (b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATIONALS.—

23 (1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal Acquisition  
24 Regulation and subject to the availability of appropriations, an executive agency, in  
25 awarding a covered contract, may waive the application of paragraphs (13) and (14)  
26 of subsection (a) to that contract if the executive agency determines that—

27 (A) the application of those provisions to that contract would adversely  
28 affect the continuation of a program, project, or activity that provides  
29 significant support services for employees of the executive agency posted  
30 outside the United States;

31 (B) the contractor has taken (or has established plans to take) appropriate  
32 actions within the contractor's control to minimize the amount and number of  
33 incidents of the payment of severance pay by the contractor to employees under  
34 the contract who are foreign nationals; and

35 (C) the payment of severance pay is necessary to comply with a law that is  
36 generally applicable to a significant number of businesses in the country in  
37 which the foreign national receiving the payment performed services under the  
38 contract or is necessary to comply with a collective bargaining agreement.

39 (2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An executive agency  
40 shall include in the solicitation for a covered contract a statement indicating—

41 (A) that a waiver has been granted under paragraph (1) for the contract; or

1 (B) whether the executive agency will consider granting a waiver and, if the  
2 executive agency will consider granting a waiver, the criteria to be used in  
3 granting the waiver.

4 (3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—An executive  
5 agency shall make the final determination whether to grant a waiver under paragraph  
6 (1) with respect to a covered contract before award of the contract.

7 (c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND  
8 QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation implementing  
9 this chapter may establish appropriate definitions, exclusions, limitations, and  
10 qualifications. A submission by a contractor of costs that are incurred by the contractor  
11 and that are claimed to be allowable under Department of Energy management and  
12 operating contracts shall be considered a proposal for settlement of indirect costs incurred  
13 by the contractor for any period after those costs have been accrued.

## 14 4305. Required regulations

15 (a) IN GENERAL.—The Federal Acquisition Regulation shall contain provisions on the  
16 allowability of contractor costs. Those provisions shall define in detail and in specific  
17 terms the costs that are unallowable, in whole or in part, under covered contracts.

18 (b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the cost principles  
19 applicable to contractor costs of the following:

20 (1) Air shows.

21 (2) Membership in civic, community, and professional organizations.

22 (3) Recruitment.

23 (4) Employee morale and welfare.

24 (5) Actions to influence (directly or indirectly) executive branch action on  
25 regulatory and contract matters (other than costs incurred in regard to contract  
26 proposals pursuant to solicited or unsolicited bids).

27 (6) Community relations.

28 (7) Dining facilities.

29 (8) Professional and consulting services, including legal services.

30 (9) Compensation.

31 (10) Selling and marketing.

32 (11) Travel.

33 (12) Public relations.

34 (13) Hotel and meal expenses.

35 (14) Expense of corporate aircraft.

36 (15) Company-furnished automobiles.

37 (16) Advertising.

1 (17) Conventions.

2 (c) ADDITIONAL REQUIREMENTS.—

3 (1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition  
4 Regulation shall require that a contracting officer not resolve any questioned costs  
5 until the contracting officer has obtained—

6 (A) adequate documentation of those costs; and

7 (B) the opinion of the contract auditor on the allowability of those costs.

8 (2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall  
9 provide that, to the maximum extent practicable, a contract auditor be present at any  
10 negotiation or meeting with the contractor regarding a determination of the  
11 allowability of indirect costs of the contractor.

12 (3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.—The  
13 Federal Acquisition Regulation shall require that all categories of costs designated in  
14 the report of a contract auditor as questioned with respect to a proposal for  
15 settlement be resolved in a manner so that the amount of the individual questioned  
16 costs that are paid will be reflected in the settlement.

## 17 4306. Applicability of regulations to subcontractors

18 The regulations referred to in sections 4304 and 4305(a) and (b) of this title shall  
19 require prime contractors of a covered contract, to the maximum extent practicable, to  
20 apply the provisions of those regulations to all subcontractors of the covered contract.

## 21 4307. Contractor certification

22 (a) CONTENT AND FORM.—A proposal for settlement of indirect costs applicable to a  
23 covered contract shall include a certification by an official of the contractor that, to the  
24 best of the certifying official's knowledge and belief, all indirect costs included in the  
25 proposal are allowable. The certification shall be in a form prescribed in the Federal  
26 Acquisition Regulation.

27 (b) WAIVER.—An executive agency may, in an exceptional case, waive the  
28 requirement for certification under subsection (a) in the case of a contract if the agency—

29 (1) determines that it would be in the interest of the Federal Government to waive  
30 the certification; and

31 (2) states in writing the reasons for the determination and makes the determination  
32 available to the public.

## 33 4308. Penalties for submission of cost known to be 34 unallowable

35 The submission to an executive agency of a proposal for settlement of costs for any  
36 period after those costs have been accrued that includes a cost that is expressly specified  
37 by statute or regulation as being unallowable, with the knowledge that the cost is  
38 unallowable, is subject to section 287 of title 18 and section 3729 of title 31.

1 4309. Burden of proof on contractor

2 In a proceeding before a board of contract appeals, the United States Court of Federal  
3 Claims, or any other Federal court in which the reasonableness of indirect costs for which  
4 a contractor seeks reimbursement from the Federal Government is in issue, the burden of  
5 proof is on the contractor to establish that those costs are reasonable.

6 4310. Proceeding costs not allowable

7 (a) DEFINITIONS.—In this section:

8 (1) COSTS.—The term “costs”, with respect to a proceeding, means all costs  
9 incurred by a contractor, whether before or after the commencement of the  
10 proceeding, including—

11 (A) administrative and clerical expenses;

12 (B) the cost of legal services, including legal services performed by an  
13 employee of the contractor;

14 (C) the cost of the services of accountants and consultants retained by the  
15 contractor; and

16 (D) the pay of directors, officers, and employees of the contractor for time  
17 devoted by those directors, officers, and employees to the proceeding.

18 (2) PENALTY.—The term “penalty” does not include restitution, reimbursement,  
19 or compensatory damages.

20 (3) PROCEEDING.—The term “proceeding” includes an investigation.

21 (b) IN GENERAL.—Except as otherwise provided in this section, costs incurred by a  
22 contractor in connection with a criminal, civil, or administrative proceeding commenced  
23 by the Federal Government or a State are not allowable as reimbursable costs under a  
24 covered contract if the proceeding—

25 (1) relates to a violation of, or failure to comply with, a Federal or State statute or  
26 regulation; and

27 (2) results in a disposition described in subsection (c).

28 (c) COVERED DISPOSITIONS.—A disposition referred to in subsection (b)(2) is any of  
29 the following:

30 (1) In a criminal proceeding, a conviction (including a conviction pursuant to a  
31 plea of nolo contendere) by reason of the violation or failure referred to in  
32 subsection (b).

33 (2) In a civil or administrative proceeding involving an allegation of fraud or  
34 similar misconduct, a determination of contractor liability on the basis of the  
35 violation or failure referred to in subsection (b).

36 (3) In any civil or administrative proceeding, the imposition of a monetary penalty  
37 by reason of the violation or failure referred to in subsection (b).

38 (4) A final decision to do any of the following, by reason of the violation or

1 failure referred to in subsection (b):

2 (A) Debar or suspend the contractor.

3 (B) Rescind or void the contract.

4 (C) Terminate the contract for default.

5 (5) A disposition of the proceeding by consent or compromise if the disposition  
6 could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

7 (d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY  
8 FEDERAL GOVERNMENT.—In the case of a proceeding referred to in subsection (b) that is  
9 commenced by the Federal Government and is resolved by consent or compromise  
10 pursuant to an agreement entered into by a contractor and the Federal Government, the  
11 costs incurred by the contractor in connection with the proceeding that are otherwise not  
12 allowable as reimbursable costs under subsection (b) may be allowed to the extent  
13 specifically provided in that agreement.

14 (e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PROCEEDING  
15 COMMENCED BY STATE.—In the case of a proceeding referred to in subsection (b) that is  
16 commenced by a State, the executive agency that awarded the covered contract involved  
17 in the proceeding may allow the costs incurred by the contractor in connection with the  
18 proceeding as reimbursable costs if the executive agency determines, in accordance with  
19 the Federal Acquisition Regulation, that the costs were incurred as a result of—

20 (1) a specific term or condition of the contract; or

21 (2) specific written instructions of the executive agency.

22 (f) OTHER ALLOWABLE COSTS.—

23 (1) IN GENERAL.—Except as provided in paragraph (3), costs incurred by a  
24 contractor in connection with a criminal, civil, or administrative proceeding  
25 commenced by the Federal Government or a State in connection with a covered  
26 contract may be allowed as reimbursable costs under the contract if the costs are not  
27 disallowable under subsection (b), but only to the extent provided in paragraph (2).

28 (2) AMOUNT OF ALLOWABLE COSTS.—

29 (A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs allowable  
30 under paragraph (1) in any case may not exceed the amount equal to 80 percent  
31 of the amount of the costs incurred, to the extent that the costs are determined  
32 to be otherwise allowable and allocable under the Federal Acquisition  
33 Regulation.

34 (B) CONTENT OF REGULATIONS.—Regulations issued for the purpose of  
35 subparagraph (A) shall provide for appropriate consideration of the complexity  
36 of procurement litigation, generally accepted principles governing the award of  
37 legal fees in civil actions involving the Federal Government as a party, and  
38 other factors as may be appropriate.

39 (3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—In the case of a  
40 proceeding referred to in paragraph (1), contractor costs otherwise allowable as

1 reimbursable costs under this subsection are not allowable if—

2 (A) the proceeding involves the same contractor misconduct alleged as the  
3 basis of another criminal, civil, or administrative proceeding; and

4 (B) the costs of the other proceeding are not allowable under subsection (b).

## 5 CHAPTER 45—CONTRACT FINANCING

6 Sec.

7 4501. Authority of executive agency.

8 4502. Payment.

9 4503. Security for advance payments.

10 4504. Conditions for progress payments.

11 4505. Payments for commercial items.

12 4506. Action in case of fraud.

### 13 4501. Authority of executive agency

14 An executive agency may—

15 (1) make advance, partial, progress or other payments under contracts for property  
16 or services made by the agency; and

17 (2) insert in solicitations for procurement of property or services a provision  
18 limiting to small business concerns advance or progress payments.

### 19 4502. Payment

20 (a) BASIS FOR PAYMENT.—When practicable, payments under section 4501 of this title  
21 shall be made on any of the following bases:

22 (1) Performance measured by objective, quantifiable methods such as delivery of  
23 acceptable items, work measurement, or statistical process controls.

24 (2) Accomplishment of events defined in the program management plan.

25 (3) Other quantifiable measures of results.

26 (b) PAYMENT AMOUNT.—Payments made under section 4501 of this title may not  
27 exceed the unpaid contract price.

### 28 4503. Security for advance payments

29 Advance payments under section 4501 of this title may be made only on adequate  
30 security and a determination by the agency head that to do so would be in the public  
31 interest. The security may be in the form of a lien in favor of the Federal Government on  
32 the property contracted for, on the balance in an account in which the payments are  
33 deposited, and on such of the property acquired for performance of the contract as the  
34 parties may agree. This lien shall be paramount to all other liens and is effective  
35 immediately upon the first advancement of funds without filing, notice, or any other

1 action by the Federal Government.

## 2 4504. Conditions for progress payments

3 (a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall ensure that a  
4 payment for work in progress (including materials, labor, and other items) under a  
5 contract of an executive agency that provides for those payments is commensurate with  
6 the work accomplished that meets standards established under the contract. The  
7 contractor shall provide information and evidence the executive agency determines is  
8 necessary to permit the executive agency to carry out this subsection.

9 (b) LIMITATION.—The executive agency shall ensure that progress payments referred  
10 to in subsection (a) are not made for more than 80 percent of the work accomplished  
11 under the contract as long as the executive agency has not made the contractual terms,  
12 specifications, and price definite.

13 (c) APPLICATION.—This section applies to a contract in an amount greater than  
14 \$25,000.

## 15 4505. Payments for commercial items

16 (a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section 4501 of this  
17 title for commercial items may be made under terms and conditions that the head of the  
18 executive agency determines are appropriate or customary in the commercial marketplace  
19 and are in the best interests of the Federal Government.

20 (b) SECURITY FOR PAYMENTS.—The head of the executive agency shall obtain  
21 adequate security for the payments. If the security is in the form of a lien in favor of the  
22 Federal Government, the lien is paramount to all other liens and is effective immediately  
23 on the first payment, without filing, notice, or other action by the Federal Government.

24 (c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made under section  
25 4501 of this title for commercial items may include payments, in a total amount not more  
26 than 15 percent of the contract price, in advance of any performance of work under the  
27 contract.

28 (d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sections 4503 and  
29 4504 of this title need not be applied if they would be inconsistent, as determined by the  
30 head of the executive agency, with commercial terms and conditions pursuant to this  
31 section.

## 32 4506. Action in case of fraud

33 (a) DEFINITION.—In this section, the term “remedy coordination official”, with respect  
34 to an executive agency, means the individual or entity in that executive agency who  
35 coordinates within that executive agency the administration of criminal, civil,  
36 administrative, and contractual remedies resulting from investigations of fraud or  
37 corruption related to procurement activities.

38 (b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any case in which the  
39 remedy coordination official of an executive agency finds that there is substantial  
40 evidence that the request of a contractor for advance, partial, or progress payment under a

1 contract awarded by that executive agency is based on fraud, the remedy coordination  
2 official shall recommend that the executive agency reduce or suspend further payments to  
3 that contractor.

4 (c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an executive agency  
5 receiving a recommendation under subsection (b) in the case of a contractor’s request for  
6 payment under a contract shall determine whether there is substantial evidence that the  
7 request is based on fraud. On making an affirmative determination, the head of the  
8 executive agency may reduce or suspend further payments to the contractor under the  
9 contract.

10 (d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduction or  
11 suspension of payments by an executive agency under subsection (c) on the basis of fraud  
12 shall be reasonably commensurate with the anticipated loss to the Federal Government  
13 resulting from the fraud.

14 (e) WRITTEN JUSTIFICATION.—A written justification for each decision of the head of  
15 an executive agency whether to reduce or suspend payments under subsection (c), and for  
16 each recommendation received by the executive agency in connection with the decision,  
17 shall be prepared and be retained in the files of the executive agency.

18 (f) NOTICE.—The head of each executive agency shall prescribe procedures to ensure  
19 that, before the head of the executive agency decides to reduce or suspend payments in  
20 the case of a contractor under subsection (c), the contractor is afforded notice of the  
21 proposed reduction or suspension and an opportunity to submit matters to the executive  
22 agency in response to the proposed reduction or suspension.

23 (g) REVIEW.—Not later than 180 days after the date on which the head of an executive  
24 agency reduces or suspends payments to a contractor under subsection (c), the remedy  
25 coordination official of the executive agency shall—

26 (1) review the determination of fraud on which the reduction or suspension is  
27 based; and

28 (2) transmit a recommendation to the head of the executive agency whether the  
29 suspension or reduction should continue.

30 (h) REPORT.—The head of each executive agency who receives recommendations  
31 made by the remedy coordination official of the executive agency to reduce or suspend  
32 payments under subsection (c) during a fiscal year shall prepare for that year a report that  
33 contains the recommendations, the actions taken on the recommendations and the reasons  
34 for those actions, and an assessment of the effects of those actions on the Federal  
35 Government. The report shall be available to any Member of Congress on request.

36 (i) RESTRICTION ON DELEGATION.—The head of an executive agency may not delegate  
37 responsibilities under this section to an individual in a position below level IV of the  
38 Executive Schedule.

## 39 CHAPTER 47—MISCELLANEOUS

40 Sec.

41 4701.Determinations and decisions.

1 4702.Prohibition on release of contractor proposals.

2 4703.Validation of proprietary data restrictions.

3 4704.Prohibition of contractors limiting subcontractor sales directly to Federal  
4 Government.

5 4705.Protection of contractor employees from reprisal for disclosure of certain  
6 information.

7 4706.Examination of facilities and records of contractor.

8 4707.Remission of liquidated damages.

9 4708.Payment of reimbursable indirect costs in cost-type research and development  
10 contracts with educational institutions.

11 4709.Implementation of electronic commerce capability.

## 12 4701.Determinations and decisions

13 (a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—

14 (1) IN GENERAL.—Determinations and decisions required to be made under this  
15 ~~part~~ **division** by the head of an executive agency or provided in this ~~part~~ **division** or  
16 chapters 1 to 11 of title 40 to be made by the Administrator of General Services or  
17 other agency head may be made for an individual purchase or contract or, except for  
18 determinations or decisions made under sections 3105, 3301 to 3305(e), and 3307,  
19 chapter 37, and section 4702 of this title or to the extent expressly prohibited by  
20 another law, for a class of purchases or contracts.

21 (2) DELEGATION.—Except as provided in section 3303(a)(7) of this title, and  
22 except as provided in section 121(d)(1) and (2) of title 40 with respect to the  
23 Administrator of General Services, the agency head, in the discretion and subject to  
24 the direction of the agency head, may delegate powers provided by this ~~part~~ **division**  
25 or chapters 1 to 11 of title 40, including the making of determinations and decisions  
26 described in paragraph (1), to other officers or officials of the agency.

27 (3) FINALITY.—The determinations and decisions are final.

28 (b) WRITTEN FINDINGS.—

29 (1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or decision under  
30 section 3901, 3905, 4503, or 4706(d)(2)(B) of this title shall be based on a written  
31 finding by the individual making the determination or decision. A finding under  
32 section 4503 or 4706(d)(2)(B) shall set out facts and circumstances that support the  
33 determination or decision.

34 (2) FINALITY.—Each finding referred to in paragraph (1) is final.

35 (3) MAINTAINING COPIES OF FINDINGS.—The head of an executive agency shall  
36 maintain for a period of not less than 6 years a copy of each finding referred to in  
37 paragraph (1) that is made by an individual in that executive agency. The period  
38 begins on the date of the determination or decision to which the finding relates.

1 4702. Prohibition on release of contractor proposals

2 (a) DEFINITION.—In this section, the term “proposal” means a proposal, including a  
3 technical, management, or cost proposal, submitted by a contractor in response to the  
4 requirements of a solicitation for a competitive proposal.

5 (b) PROHIBITION.—A proposal in the possession or control of an executive agency may  
6 not be made available to any person under section 552 of title 5.

7 (c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that is set forth or  
8 incorporated by reference in a contract entered into between the agency and the  
9 contractor that submitted the proposal.

10 4703. Validation of proprietary data restrictions

11 (a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—A contract for  
12 property or services entered into by an executive agency that provides for the delivery of  
13 technical data shall provide that—

14 (1) a contractor or subcontractor at any tier shall be prepared to furnish to the  
15 contracting officer a written justification for any restriction the contractor or  
16 subcontractor asserts on the right of the Federal Government to use the data; and

17 (2) the contracting officer may review the validity of a restriction the contractor or  
18 subcontractor asserts under the contract on the right of the Federal Government to  
19 use technical data furnished to the Federal Government under the contract if the  
20 contracting officer determines that reasonable grounds exist to question the current  
21 validity of the asserted restriction and that the continued adherence to the asserted  
22 restriction by the Federal Government would make it impracticable to procure the  
23 item competitively at a later time.

24 (b) CHALLENGE OF RESTRICTION.—If after a review the contracting officer determines  
25 that a challenge to the asserted restriction is warranted, the contracting officer shall  
26 provide written notice to the contractor or subcontractor asserting the restriction. The  
27 notice shall state—

28 (1) the grounds for challenging the asserted restriction; and

29 (2) the requirement for a response within 60 days justifying the current validity of  
30 the asserted restriction.

31 (c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor asserting a  
32 restriction subject to this section submits to the contracting officer a written request  
33 showing the need for additional time to comply with the requirement to justify the current  
34 validity of the asserted restriction, the contracting officer shall provide appropriate  
35 additional time to adequately permit the justification to be submitted.

36 (d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives notices of  
37 challenges to restrictions on technical data from more than one contracting officer, and  
38 notifies each contracting officer of the existence of more than one challenge, the  
39 contracting officer initiating the earliest challenge, after consultation with the party  
40 asserting the restriction and the other contracting officers, shall formulate a schedule of

1 responses to each of the challenges that will afford the party asserting the restriction with  
2 an equitable opportunity to respond to each challenge.

3 (e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

4 (1) NO RESPONSE SUBMITTED.—The contracting officer shall issue a decision  
5 pertaining to the validity of the asserted restriction if the contractor or subcontractor  
6 does not submit a response under subsection (b).

7 (2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justification submitted  
8 in response to the notice provided pursuant to subsection (b), a contracting officer  
9 shall issue a decision or notify the party asserting the restriction of the time within  
10 which a decision will be issued.

11 (f) CLAIM DEEMED CLAIM WITHIN CHAPTER 69.—A claim pertaining to the validity of  
12 the asserted restriction that is submitted in writing to a contracting officer by a contractor  
13 or subcontractor at any tier is deemed to be a claim within the meaning of chapter 69 of  
14 this title.

15 (g) FINAL DISPOSITION OF CHALLENGE.—

16 (1) CHALLENGE IS SUSTAINED.—If the contracting officer’s challenge to the  
17 restriction on the right of the Federal Government to use technical data is sustained  
18 on final disposition—

19 (A) the restriction is cancelled; and

20 (B) if the asserted restriction is found not to be substantially justified, the  
21 contractor or subcontractor, as appropriate, is liable to the Federal Government  
22 for payment of the cost to the Federal Government of reviewing the asserted  
23 restriction and the fees and other expenses (as defined in section 2412(d)(2)(A)  
24 of title 28) incurred by the Federal Government in challenging the asserted  
25 restriction, unless special circumstances would make the payment unjust.

26 (2) CHALLENGE NOT SUSTAINED.—If the contracting officer’s challenge to the  
27 restriction on the right of the Federal Government to use technical data is not  
28 sustained on final disposition, the Federal Government—

29 (A) continues to be bound by the restriction; and

30 (B) is liable for payment to the party asserting the restriction for fees and  
31 other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the  
32 party asserting the restriction in defending the asserted restriction if the  
33 challenge by the Federal Government is found not to be made in good faith.

34 **4704. Prohibition of contractors limiting subcontractor sales**  
35 **directly to Federal Government**

36 (a) CONTRACT RESTRICTIONS.—Each contract for the purchase of property or services  
37 made by an executive agency shall provide that the contractor will not—

38 (1) enter into an agreement with a subcontractor under the contract that has the  
39 effect of unreasonably restricting sales by the subcontractor directly to the Federal

1 Government of any item or process (including computer software) made or  
2 furnished by the subcontractor under the contract (or any follow-on production  
3 contract); or

4 (2) otherwise act to restrict unreasonably the ability of a subcontractor to make  
5 sales described in paragraph (1) to the Federal Government.

6 (b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a contractor from  
7 asserting rights it otherwise has under law.

8 (c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a  
9 contract for an amount that is not greater than the simplified acquisition threshold.

10 (d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO OTHER  
11 PURCHASERS.—An agreement between the contractor in a contract for the acquisition of  
12 commercial items and a subcontractor under the contract that restricts sales by the  
13 subcontractor directly to persons other than the contractor may not be considered to  
14 unreasonably restrict sales by that subcontractor to the Federal Government in violation  
15 of the provision included in the contract pursuant to subsection (a) if the agreement does  
16 not result in the Federal Government being treated differently with regard to the  
17 restriction than any other prospective purchaser of the commercial items from that  
18 subcontractor.

## 19 4705. Protection of contractor employees from reprisal for 20 disclosure of certain information

21 (a) DEFINITIONS.—In this section:

22 (1) CONTRACT.—The term “contract” means a contract awarded by the head of an  
23 executive agency.

24 (2) CONTRACTOR.—The term “contractor” means a person awarded a contract  
25 with an executive agency.

26 (3) INSPECTOR GENERAL.—The term “Inspector General” means an Inspector  
27 General appointed under the Inspector General Act of 1978 (5 App. U.S.C.).

28 (b) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged,  
29 demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of  
30 Congress or an authorized official of an executive agency or the Department of Justice  
31 information relating to a substantial violation of law related to a contract (including the  
32 competition for, or negotiation of, a contract).

33 (c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the individual  
34 has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to  
35 the Inspector General of the executive agency. Unless the Inspector General determines  
36 that the complaint is frivolous, the Inspector General shall investigate the complaint and,  
37 on completion of the investigation, submit a report of the findings of the investigation to  
38 the individual, the contractor concerned, and the head of the agency. If the executive  
39 agency does not have an Inspector General, the duties of the Inspector General under this  
40 section shall be performed by an official designated by the head of the executive agency.

1 (d) REMEDY AND ENFORCEMENT AUTHORITY.—

2 (1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head of an  
3 executive agency determines that a contractor has subjected an individual to a  
4 reprisal prohibited by subsection (b), the head of the executive agency may take one  
5 or more of the following actions:

6 (A) ABATEMENT.—Order the contractor to take affirmative action to abate  
7 the reprisal.

8 (B) REINSTATEMENT.—Order the contractor to reinstate the individual to the  
9 position that the individual held before the reprisal, together with the  
10 compensation (including back pay), employment benefits, and other terms and  
11 conditions of employment that would apply to the individual in that position if  
12 the reprisal had not been taken.

13 (C) PAYMENT.—Order the contractor to pay the complainant an amount  
14 equal to the aggregate amount of all costs and expenses (including attorneys'  
15 fees and expert witnesses' fees) that the complainant reasonably incurred for, or  
16 in connection with, bringing the complaint regarding the reprisal, as determined  
17 by the head of the executive agency.

18 (2) ENFORCEMENT ORDER.—When a contractor fails to comply with an order  
19 issued under paragraph (1), the head of the executive agency shall file an action for  
20 enforcement of the order in the United States district court for a district in which the  
21 reprisal was found to have occurred. In an action brought under this paragraph, the  
22 court may grant appropriate relief, including injunctive relief and compensatory and  
23 exemplary damages.

24 (3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected or aggrieved  
25 by an order issued under paragraph (1) may obtain review of the order's  
26 conformance with this subsection, and regulations issued to carry out this section, in  
27 the United States court of appeals for a circuit in which the reprisal is alleged in the  
28 order to have occurred. A petition seeking review must be filed no more than 60  
29 days after the head of the agency issues the order. Review shall conform to chapter 7  
30 of title 5.

31 (e) SCOPE OF SECTION.—This section does not—

32 (1) authorize the discharge of, demotion of, or discrimination against an employee  
33 for a disclosure other than a disclosure protected by subsection (b); or

34 (2) modify or derogate from a right or remedy otherwise available to the  
35 employee.

## 36 4706. Examination of facilities and records of contractor

37 (a) DEFINITION.—In this section, the term “records” includes books, documents,  
38 accounting procedures and practices, and other data, regardless of type and regardless of  
39 whether the items are in written form, in the form of computer data, or in any other form.

40 (b) AGENCY AUTHORITY.—

1 (1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an executive  
2 agency, acting through an authorized representative, may inspect the plant and audit  
3 the records of—

4 (A) a contractor performing a cost-reimbursement, incentive, time-and-  
5 materials, labor-hour, or price-redeterminable contract, or any combination of  
6 those contracts, the executive agency makes under this ~~part~~; **division**; and

7 (B) a subcontractor performing a cost-reimbursement, incentive, time-and-  
8 materials, labor-hour, or price-redeterminable subcontract, or any combination  
9 of those subcontracts, under a contract referred to in subparagraph (A).

10 (2) EXAMINATION OF RECORDS.—The head of an executive agency, acting through  
11 an authorized representative, may, for the purpose of evaluating the accuracy,  
12 completeness, and currency of certified cost or pricing data required to be submitted  
13 pursuant to chapter 35 of this title with respect to a contract or subcontract, examine  
14 all records of the contractor or subcontractor related to—

15 (A) the proposal for the contract or subcontract;

16 (B) the discussions conducted on the proposal;

17 (C) pricing of the contract or subcontract; or

18 (D) performance of the contract or subcontract.

19 (c) SUBPOENA POWER.—

20 (1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Inspector  
21 General of an executive agency appointed under section 3 or 8G of the Inspector  
22 General Act of 1978 (5 App. U.S.C.) or, on request of the head of an executive  
23 agency, the Director of the Defense Contract Audit Agency (or any successor  
24 agency) of the Department of Defense or the Inspector General of the General  
25 Services Administration may require by subpoena the production of records of a  
26 contractor, access to which is provided for that executive agency by subsection (b).

27 (2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of  
28 contumacy or refusal to obey, is enforceable by order of an appropriate United  
29 States district court.

30 (3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may  
31 not be delegated.

32 (4) REPORT.—In the year following a year in which authority provided in  
33 paragraph (1) is exercised for an executive agency, the head of the executive agency  
34 shall submit to the Committee on Homeland Security and Governmental Affairs of  
35 the Senate and the Committee on **Oversight and** Government Reform of the House  
36 of Representatives a report on the exercise of the authority during the preceding year  
37 and the reasons why the authority was exercised in any instance.

38 (d) AUTHORITY OF COMPTROLLER GENERAL.—

39 (1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded  
40 after using procedures other than sealed bid procedures shall provide that the

1 Comptroller General and representatives of the Comptroller General may examine  
2 records of the contractor, or any of its subcontractors, that directly pertain to, and  
3 involve transactions relating to, the contract or subcontract.

4 (2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1)  
5 does not apply to a contract or subcontract with a foreign contractor or foreign  
6 subcontractor if the executive agency concerned determines, with the concurrence of  
7 the Comptroller General or the designee of the Comptroller General, that applying  
8 paragraph (1) to the contract or subcontract would not be in the public interest. The  
9 concurrence of the Comptroller General or the designee is not required when—

10 (A) the contractor or subcontractor is—

11 (i) the government of a foreign country or an agency of that  
12 government; or

13 (ii) precluded by the laws of the country involved from making its  
14 records available for examination; and

15 (B) the executive agency determines, after taking into account the price and  
16 availability of the property and services from United States sources, that the  
17 public interest would be best served by not applying paragraph (1).

18 (3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not require a  
19 contractor or subcontractor to create or maintain a record that the contractor or  
20 subcontractor does not maintain in the ordinary course of business or pursuant to  
21 another law.

22 (e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An executive agency may  
23 not perform an audit of indirect costs under a contract, subcontract, or modification  
24 before or after entering into the contract, subcontract, or modification when the  
25 contracting officer determines that the objectives of the audit can reasonably be met by  
26 accepting the results of an audit that was conducted by another department or agency of  
27 the Federal Government within one year preceding the date of the contracting officer's  
28 determination.

29 (f) EXPIRATION OF AUTHORITY.—The authority of an executive agency under  
30 subsection (b) and the authority of the Comptroller General under subsection (d) shall  
31 expire 3 years after final payment under the contract or subcontract.

32 (g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the  
33 following contracts:

34 (1) Contracts for utility services at rates not exceeding those established to apply  
35 uniformly to the public, plus any applicable reasonable connection charge.

36 (2) A contract or subcontract that is not greater than the simplified acquisition  
37 threshold.

38 (h) ELECTRONIC FORM ALLOWED.—This section does not preclude a contractor from  
39 duplicating or storing original records in electronic form.

40 (i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not require a  
41 contractor or subcontractor to provide original records in an audit carried out pursuant to

1 this section if the contractor or subcontractor provides photographic or electronic images  
2 of the original records and meets the following requirements:

3 (1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or subcontractor  
4 has established procedures to ensure that the imaging process preserves the integrity,  
5 reliability, and security of the original records.

6 (2) INDEXING SYSTEM MAINTAINED.—The contractor or subcontractor maintains  
7 an effective indexing system to permit timely and convenient access to the imaged  
8 records.

9 (3) ORIGINAL RECORDS RETAINED.—The contractor or subcontractor retains the  
10 original records for a minimum of one year after imaging to permit periodic  
11 validation of the imaging systems.

## 12 4707. Remission of liquidated damages

13 When a contract made on behalf of the Federal Government by the head of a Federal  
14 agency, or by an authorized officer of the agency, includes a provision for liquidated  
15 damages for delay, the Secretary of the Treasury on recommendation of the head of the  
16 agency may remit any part of the damages as the Secretary of the Treasury believes is  
17 just and equitable.

## 18 4708. Payment of reimbursable indirect costs in cost-type 19 research and development contracts with educational 20 institutions

21 A cost-type research and development contract (including a grant) with a university,  
22 college, or other educational institution may provide for payment of reimbursable indirect  
23 costs on the basis of predetermined fixed-percentage rates applied to the total of the  
24 reimbursable direct costs incurred or to an element of the total of the reimbursable direct  
25 costs incurred.

## 26 4709. Implementation of electronic commerce capability

27 (a) ROLE OF HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall  
28 implement the electronic commerce capability required by section 2301 of this title. In  
29 implementing the capability, the head of an executive agency shall consult with the  
30 Administrator.

31 (b) PROGRAM MANAGER.—The head of each executive agency shall designate a  
32 program manager to implement the electronic commerce capability for the agency. The  
33 program manager reports directly to an official at a level not lower than the senior  
34 procurement executive designated for the agency under section 1702(c) of this title.

## 35 Subtitle II—Other Advertising and Contract Provisions

36 Chapter

37 Sec.

1 61.

2 Advertising

3 6101

4 63.

5 General Contract Provisions

6 6301

7 65.

8 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000

9 6501

10 67.

11 Service Contract Labor Standards

12 6701

13 69.

14 Contract Disputes

15 6901

## 16 CHAPTER 61—ADVERTISING

17 Sec.

18 6101. Advertising requirement for Federal Government purchases and sales.

19 6102. Exceptions from advertising requirement.

20 6103. Opening of bids.

### 21 6101. Advertising requirement for Federal Government 22 purchases and sales

23 (a) DEFINITIONS.—In this section—

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

26 (2) FEDERAL GOVERNMENT.—The term “Federal Government” includes the  
27 government of the District of Columbia.

28 (b) PURCHASES.—

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

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

- 1 (A) the amount involved in any one case does not exceed \$25,000;
- 2 (B) public exigencies require the immediate delivery of articles or  
3 performance of services;
- 4 (C) only one source of supply is available and the Federal Government  
5 purchasing or contracting officer so certifies; or
- 6 (D) services are required to be performed by a contractor in person and are—  
7 (i) of a technical and professional nature; or  
8 (ii) under Federal Government supervision and paid for on a time basis.

9 (c) SALES.—Except when otherwise authorized by law or when the reasonable value  
10 involved in any one case does not exceed \$500, sales and contracts of sale by the Federal  
11 Government are governed by the requirements of this section for advertising.

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

## 14 6102.Exceptions from advertising requirement

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

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

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

26 (d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section 6101 of this  
27 title does not apply to the International Committee of Aerial Legal Experts with respect to  
28 necessary stenographic and other services by contract.

29 (e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equipment and the  
30 procurement of services for all branches under the Architect of the Capitol may be made  
31 in the open market according to common business practice, without compliance with  
32 section 6101 of this title, when the aggregate amount of the purchase or the service does  
33 not exceed \$25,000 in any instance.

34 (f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and other forest  
35 products produced by Indian enterprises from forests on Indian reservations may be sold  
36 under regulations the Secretary of the Interior prescribes, without compliance with  
37 section 6101 of this title.

38 (g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not apply to  
39 purchases and contracts for supplies or services for any office of the House of

1 Representatives.

2 (h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congressional Budget  
3 Office may enter into agreements or contracts without regard to section 6101 of this title.

## 4 6103.Opening of bids

5 Whenever proposals for supplies have been solicited, the parties responding to the  
6 solicitation shall be notified of the time and place of the opening of the bids, and be  
7 permitted to be present either in person or by attorney. A record of each bid shall be made  
8 at the time and place of the opening of the bids.

## 9 CHAPTER 63—GENERAL CONTRACT PROVISIONS

10 Sec.

11 6301.Authorization requirement.

12 6302.Contracts for fuel made by Secretary of the Army.

13 6303.Certain contracts limited to appropriated amounts.

14 6304.Certain contracts limited to one-year term.

15 6305.Prohibition on transfer of contract and certain allowable assignments.

16 6306.Prohibition on Members of Congress making contracts with Federal Government.

17 6307.Contracts with Federal Government-owned establishments and availability of  
18 appropriations.

19 6308.Contracts for transportation of Federal Government securities.

20 6309.Honorable discharge certificate in lieu of birth certificate.

## 21 6301.Authorization requirement

22 (a) IN GENERAL.—A contract or purchase on behalf of the Federal Government shall  
23 not be made unless the contract or purchase is authorized by law or is under an  
24 appropriation adequate to its fulfillment.

25 (b) EXCEPTION.—

26 (1) DEFINITION.—In this subsection, the term “defined Secretary” means—

27 (A) the Secretary of Defense; or

28 (B) the Secretary of ~~the Department in which~~ **Homeland Security with**  
29 **respect to** the Coast Guard ~~is operating~~ when the Coast Guard is not operating  
30 as a service in the Navy.

31 (2) IN GENERAL.—Subsection (a) does not apply to a contract or purchase made  
32 by a defined Secretary for clothing, subsistence, forage, fuel, quarters,  
33 transportation, or medical and hospital supplies.

34 (3) CURRENT YEAR LIMITATION.—A contract or purchase made by a defined  
35 Secretary under this subsection may not exceed the necessities of the current year.

1 (4) REPORTS.—The defined Secretary shall immediately advise Congress when  
2 authority is exercised under this subsection. The defined Secretary shall report  
3 quarterly on the estimated obligations incurred pursuant to the authority granted in  
4 this subsection.

5 (c) SPECIAL RULE FOR PURCHASE OF LAND.—Land may not be purchased by the  
6 Federal Government unless the purchase is authorized by law.

## 7 6302. Contracts for fuel made by Secretary of the Army

8 The Secretary of the Army, when the Secretary believes it is in the interest of the  
9 United States, may enter into contracts and incur obligations for fuel in sufficient  
10 quantities to meet the requirements for one year without regard to the current fiscal year.  
11 Amounts appropriated for the fiscal year in which the contract is made or amounts  
12 appropriated or which may be appropriated for the following fiscal year may be used to  
13 pay for supplies delivered under a contract made pursuant to this section.

## 14 6303. Certain contracts limited to appropriated amounts

15 A contract to erect, repair, or furnish a public building, or to make any public  
16 improvement, shall not be made on terms requiring the Federal Government to pay more  
17 than the amount specifically appropriated for the activity covered by the contract.

## 18 6304. Certain contracts limited to one-year term

19 Except as otherwise provided, an executive department shall not make a contract for  
20 stationery or other supplies for a term longer than one year from the time the contract is  
21 made.

## 22 6305. Prohibition on transfer of contract and certain 23 allowable assignments

24 (a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party to whom the  
25 Federal Government gives a contract or order may not transfer the contract or order, or  
26 any interest in the contract or order, to another party. A purported transfer in violation of  
27 this subsection annuls the contract or order so far as the Federal Government is  
28 concerned, except that all rights of action for breach of contract are reserved to the  
29 Federal Government.

30 (b) ASSIGNMENT.—

31 (1) IN GENERAL.—Notwithstanding subsection (a) and in accordance with the  
32 requirements of this subsection, amounts due from the Federal Government under a  
33 contract may be assigned to a bank, trust company, Federal lending agency, or other  
34 financing institution.

35 (2) MINIMUM AMOUNT.—This subsection applies only to a contract under which  
36 the aggregate amounts due from the Federal Government total at least \$1,000.

37 (3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made under this  
38 subsection if the contract forbids the assignment.

1 (4) FULL BALANCE DUE.—Unless otherwise expressly permitted by the contract,  
2 an assignment under this subsection must cover the balance of all amounts due from  
3 the Federal Government under the contract.

4 (5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by the contract,  
5 an assignment under this subsection may not be made to more than one party or be  
6 subject to further assignment, except that assignment may be made to one party as  
7 agent or trustee for 2 or more parties participating in the financing.

8 (6) WRITTEN NOTICE.—The assignee of an assignment under this subsection shall  
9 file written notice of the assignment and a true copy of the instrument of assignment  
10 with—

11 (A) the contracting officer or head of the officer’s department or agency;

12 (B) the surety on any bond connected with the contract; and

13 (C) the disbursing officer, if any, designated in the contract to make  
14 payment.

15 (7) VALIDITY.—Notwithstanding any law to the contrary governing the validity of  
16 assignments, an assignment under this subsection is a valid assignment for all  
17 purposes.

18 (8) NO REFUND TO COVER ASSIGNOR’S LIABILITY.—The assignee of an assignment  
19 under this subsection is not liable to make any refund to the Federal Government  
20 because of an assignor’s liability to the Federal Government, whether that liability  
21 arises from the contract or independently.

22 (9) AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.—

23 (A) CONTRACT PROVISION.—A contract of the Department of Defense, the  
24 General Services Administration, the Department of Energy, or another  
25 department or agency of the Federal Government designated by the President  
26 may, on a determination of need by the President, provide or be amended  
27 without consideration to provide that payments made to an assignee under the  
28 contract are not subject to reduction or setoff. Each determination of need by  
29 the President under this subparagraph shall be published in the Federal  
30 Register.

31 (B) CARRYING OUT CONTRACT PROVISION.—When a “no reduction or setoff”  
32 provision as described in subparagraph (A) is included in a contract, payments  
33 to the assignee are not subject to reduction or setoff for an assignor’s liability  
34 arising—

35 (i) independently of the contract;

36 (ii) on account of renegotiation under a renegotiation statute or under a  
37 statutory renegotiation article in the contract;

38 (iii) on account of fines;

39 (iv) on account of penalties; or

40 (v) on account of taxes, social security contributions, or the withholding

1 or non-withholding of taxes or social security contributions, whether  
2 arising from or independently of the contract.

3 (C) LIMITATION.—Subparagraph (B)(iv) does not apply to amounts which  
4 may be collected or withheld from the assignor in accordance with or for  
5 failure to comply with the terms of the contract.

## 6 6306.Prohibition on Members of Congress making 7 contracts with Federal Government

8 (a) IN GENERAL.—A Member of Congress may not enter into or benefit from a contract  
9 or agreement or any part of a contract or agreement with the Federal Government.

10 (b) EXEMPTIONS.—

11 (1) IN GENERAL.—Subsection (a) does not apply to contracts that the Secretary of  
12 Agriculture may enter into with farmers.

13 (2) CERTAIN ACTS.—Subsection (a) does not apply to a contract entered into  
14 under—

15 (A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

16 (B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

17 (C) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.).

18 (3) PUBLIC RECORD.—An exemption under this subsection shall be made a matter  
19 of public record.

## 20 6307.Contracts with Federal Government-owned 21 establishments and availability of appropriations

22 An order or contract placed with a Federal Government-owned establishment for work,  
23 material, or the manufacture of material pertaining to an approved project is deemed to be  
24 an obligation in the same manner that a similar order or contract placed with a  
25 commercial manufacturer or private contractor is an obligation. Appropriations remain  
26 available to pay an obligation to a Federal Government-owned establishment just as  
27 appropriations remain available to pay an obligation to a commercial manufacturer or  
28 private contractor.

## 29 6308.Contracts for transportation of Federal Government 30 securities

31 When practicable, a contract for transporting bullion, cash, or securities of the Federal  
32 Government shall be awarded to the lowest responsible bidder after notice to all parties  
33 with means of transportation.

## 34 6309.Honorable discharge certificate in lieu of birth 35 certificate

36 (a) IN GENERAL.—An employer described in subsection (b) may not deny employment,

1 on account of failure to produce a birth certificate, to an individual who submits, in lieu  
2 of the birth certificate, an honorable discharge certificate (or certificate issued in lieu of  
3 an honorable discharge certificate) from the Army, Air Force, Navy, Marine Corps, or  
4 Coast Guard of the United States, unless the honorable discharge certificate shows on its  
5 face that the individual may have been an alien at the time of its issuance.

6 (b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to in subsection  
7 (a) is an employer—

8 (1) engaged in—

9 (A) the production, maintenance, or storage of arms, armament, ammunition,  
10 implements of war, munitions, machinery, tools, clothing, food, fuel, or any  
11 articles or supplies, or parts or ingredients of any articles or supplies; or

12 (B) the construction, reconstruction, repair, or installation of a building,  
13 plant, structure, or facility; and

14 (2) engaged in the activity described in paragraph (1) under—

15 (A) a contract with the Federal Government; or

16 (B) any contract that the President, the Secretary of the Army, the Secretary  
17 of the Air Force, the Secretary of the Navy, or the Secretary of the Department  
18 in which the Coast Guard is operating certifies to the employer to be necessary  
19 to the national defense.

20 **CHAPTER 65—CONTRACTS FOR MATERIALS,**  
21 **SUPPLIES, ARTICLES, AND EQUIPMENT**  
22 **EXCEEDING \$10,000**

23 Sec.

24 6501.Definitions.

25 6502.Required contract terms.

26 6503.Breach or violation of required contract terms.

27 6504.Three-year prohibition on new contracts in case of breach or violation.

28 6505.Exclusions.

29 6506.Administrative provisions.

30 6507.Hearing authority and procedures.

31 6508.Authority to make exceptions.

32 6509.Other procedures.

33 6510.Manufacturers and regular dealers.

34 6511.Effect on other law.

35 **6501.Definitions**

1 In this chapter—

2 (1) AGENCY OF THE UNITED STATES.—The term “agency of the United States”  
3 means an executive department, independent establishment, or other agency or  
4 instrumentality of the United States, the District of Columbia, or a corporation in  
5 which all stock is beneficially owned by the Federal Government.

6 (2) PERSON.—The term “person” includes one or more individuals, partnerships,  
7 associations, corporations, legal representatives, trustees, trustees in cases under title  
8 11, or receivers.

9 (3) SECRETARY.—The term “Secretary” means the Secretary of Labor.

## 10 6502. Required contract terms

11 A contract made by an agency of the United States for the manufacture or furnishing of  
12 materials, supplies, articles, or equipment, in an amount exceeding \$10,000, shall include  
13 the following representations and stipulations:

14 (1) MINIMUM WAGES TO BE PAID.—All individuals employed by the contractor in  
15 the manufacture or furnishing of materials, supplies, articles, or equipment under the  
16 contract will be paid, without subsequent deduction or rebate on any account, not  
17 less than the prevailing minimum wages, as determined by the Secretary, for  
18 individuals employed in similar work or in the particular or similar industries or  
19 groups of industries currently operating in the locality in which the materials,  
20 supplies, articles, or equipment are to be manufactured or furnished under the  
21 contract, except that this paragraph applies only to purchases or contracts relating to  
22 industries that have been the subject matter of a determination by the Secretary.

23 (2) MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.—No individual  
24 employed by the contractor in the manufacture or furnishing of materials, supplies,  
25 articles, or equipment under the contract shall be permitted to work in excess of 40  
26 hours in any one week, except that this paragraph does not apply to an employer  
27 who has entered into an agreement with employees pursuant to paragraph (1) or (2)  
28 of section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(b)(1) or (2)).

29 (3) INELIGIBLE EMPLOYEES.—No individual under 16 years of age and no  
30 incarcerated individual will be employed by the contractor in the manufacture or  
31 furnishing of materials, supplies, articles, or equipment under the contract, except  
32 that this section, or other law or executive order containing similar prohibitions  
33 against the purchase of goods by the Federal Government, does not apply to convict  
34 labor that satisfies the conditions of section 1761(c) of title 18.

35 (4) STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CONTRACT  
36 PERFORMED.—No part of the contract will be performed, and no materials, supplies,  
37 articles, or equipment will be manufactured or fabricated under the contract, in  
38 plants, factories, buildings, or surroundings, or under working conditions, that are  
39 unsanitary, hazardous, or dangerous to the health and safety of employees engaged  
40 in the performance of the contract. Compliance with the safety, sanitary, and factory  
41 inspection laws of the State in which the work or part of the work is to be performed  
42 is prima facie evidence of compliance with this paragraph.

1 **6503. Breach or violation of required contract terms**

2 (a) **APPLICABLE BREACH OR VIOLATION.**—This section applies in case of breach or  
3 violation of a representation or stipulation included in a contract under section 6502 of  
4 this title.

5 (b) **LIQUIDATED DAMAGES.**—In addition to damages for any other breach of the  
6 contract, the party responsible for a breach or violation described in subsection (a) is  
7 liable to the Federal Government for the following liquidated damages:

8 (1) An amount equal to the sum of \$10 per day for each individual under 16 years  
9 of age and each incarcerated individual knowingly employed in the performance of  
10 the contract.

11 (2) An amount equal to the sum of each underpayment of wages due an employee  
12 engaged in the performance of the contract, including any underpayments arising  
13 from deductions, rebates, or refunds.

14 (c) **CANCELLATION AND ALTERNATIVE COMPLETION.**—In addition to the Federal  
15 Government being entitled to damages described in subsection (b), the agency of the  
16 United States that made the contract may cancel the contract and make open-market  
17 purchases or make other contracts for the completion of the original contract, charging  
18 any additional cost to the original contractor.

19 (d) **RECOVERY OF AMOUNTS DUE.**—An amount due the Federal Government because  
20 of a breach or violation described in subsection (a) may be withheld from any amounts  
21 owed the contractor under any contract under section 6502 of this title or may be  
22 recovered in a suit brought by the Attorney General.

23 (e) **EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.**—An amount  
24 withheld or recovered under subsection (d) that is based on an underpayment of wages as  
25 described in subsection (b)(2) shall be held in a special deposit account. On order of the  
26 Secretary, the amount shall be paid directly to the underpaid employee on whose account  
27 the amount was withheld or recovered. However, an employee’s claim for payment under  
28 this subsection may be entertained only if made within one year from the date of actual  
29 notice to the contractor of the withholding or recovery.

30 **6504. Three-year prohibition on new contracts in case of**  
31 **breach or violation**

32 (a) **DISTRIBUTION OF LIST.**—The Comptroller General shall distribute to each agency  
33 of the United States a list containing the names of persons found by the Secretary to have  
34 breached or violated a representation or stipulation included in a contract under section  
35 6502 of this title.

36 (b) **THREE-YEAR PROHIBITION.**—Unless the Secretary recommends otherwise, a  
37 contract described in section 6502 of this title may not be awarded to a person named on  
38 the list under subsection (a), or to a firm, corporation, partnership, or association in which  
39 the person has a controlling interest, until 3 years have elapsed from the date of the  
40 determination by the Secretary that a breach or violation occurred.

1 **6505.Exclusions**

2 (a) ITEMS AVAILABLE IN THE OPEN MARKET.—This chapter does not apply to the  
3 purchase of materials, supplies, articles, or equipment that may usually be bought in the  
4 open market.

5 (b) PERISHABLES AND AGRICULTURAL PRODUCTS.—This chapter does not apply to any  
6 of the following:

7 (1) Perishables, including dairy, livestock and nursery products.

8 (2) Agricultural or farm products processed for first sale by the original  
9 producers.

10 (3) Contracts made by the Secretary of Agriculture for the purchase of agricultural  
11 commodities or products of agricultural commodities.

12 (c) CARRIAGE OF FREIGHT OR PERSONNEL.—This chapter may not be construed to  
13 apply to—

14 (1) the carriage of freight or personnel by vessel, airplane, bus, truck, express, or  
15 railway line where published tariff rates are in effect; or

16 (2) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151  
17 et seq.).

18 **6506.Administrative provisions**

19 (a) IN GENERAL.—The Secretary shall administer this chapter.

20 (b) REGULATIONS.—The Secretary may make, amend, and rescind regulations as  
21 necessary to carry out this chapter.

22 (c) USE OF GOVERNMENT OFFICERS AND EMPLOYEES.—The Secretary shall use Federal  
23 officers and employees and, with a State’s consent, State and local officers and  
24 employees as the Secretary finds necessary to assist in the administration of this chapter.

25 (d) APPOINTMENTS.—The Secretary shall appoint an administrative officer and  
26 attorneys, experts, and other employees from time to time as the Secretary finds  
27 necessary for the administration of this chapter. The appointments are subject to chapter  
28 51 and subchapter III of chapter 53 of title 5 and other law applicable to the employment  
29 and compensation of officers and employees of the Federal Government.

30 (e) INVESTIGATIONS.—The Secretary, or an authorized representative of the Secretary,  
31 may make investigations and findings as provided in this chapter and may, in any part of  
32 the United States, prosecute an inquiry necessary to carry out this chapter.

33 **6507.Hearing authority and procedures**

34 (a) RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINATIONS.—A wage  
35 determination under section 6502(1) of this title shall be made on the record after  
36 opportunity for a hearing.

37 (b) AUTHORITY TO HOLD HEARINGS.—The Secretary or an impartial representative  
38 designated by the Secretary may hold hearings when there is a complaint of breach or

1 violation of a representation or stipulation included in a contract under section 6502 of  
2 this title. The Secretary may initiate hearings on the Secretary's own motion or on the  
3 application of a person affected by the ruling of an agency of the United States relating to  
4 a proposal or contract under this chapter.

5 (c) ORDERS TO COMPEL TESTIMONY.—The Secretary or an impartial representative  
6 designated by the Secretary may issue orders requiring witnesses to attend hearings held  
7 under this section and to produce evidence and testify under oath. Witnesses shall be paid  
8 fees and mileage at the same rates as witnesses in courts of the United States.

9 (d) ENFORCEMENT OF ORDERS.—If a person refuses or fails to obey an order issued  
10 under subsection (c), the Secretary or an impartial representative designated by the  
11 Secretary may bring an action to enforce the order in a district court of the United States  
12 or in the district court of a territory or possession of the United States. A court has  
13 jurisdiction to enforce the order if the inquiry is being carried out within the court's  
14 judicial district 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 the order  
16 issued under subsection (c), and the court may punish any further refusal or failure as  
17 contempt of court.

18 (e) FINDINGS OF FACT.—After notice and a hearing, the Secretary or an impartial  
19 representative designated by the Secretary shall make findings of fact. The findings are  
20 conclusive for agencies of the United States. If supported by a preponderance of the  
21 evidence, the findings are conclusive in any court of the United States.

22 (f) DECISIONS.—The Secretary or an impartial representative designated by the  
23 Secretary may make decisions, based on findings of fact, that are considered necessary to  
24 enforce this chapter.

## 25 6508. Authority to make exceptions

26 (a) DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.—When the head of an agency of  
27 the United States makes a written finding that the inclusion of representations or  
28 stipulations under section 6502 of this title in a proposal or contract will seriously impair  
29 the conduct of Federal Government business, the Secretary shall make exceptions, in  
30 specific cases or otherwise, when justice or the public interest will be served.

31 (b) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CONTRACTS.—When an  
32 agency of the United States and a contractor jointly recommend, the Secretary may  
33 modify the terms of an existing contract with respect to minimum wages and maximum  
34 hours of labor as the Secretary finds necessary and proper in the public interest or to  
35 prevent injustice and undue hardship.

36 (c) AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARIATIONS,  
37 TOLERANCES, AND EXEMPTIONS.—The Secretary may provide reasonable limitations and  
38 may prescribe regulations to allow reasonable variations, tolerances, and exemptions in  
39 the application of this chapter to contractors, including with respect to minimum wages  
40 and maximum hours of labor.

41 (d) RATE OF PAY FOR OVERTIME.—When the Secretary permits an increase in the  
42 maximum hours of labor stipulated in a contract, the Secretary shall set a rate of pay for

1 overtime. The overtime rate must be at least one and one-half times the basic hourly rate.

2 (e) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may suspend any of  
3 the representations and stipulations contained in section 6502 of this title whenever, in  
4 the President’s judgment, suspension is in the public interest.

## 5 6509. Other procedures

6 (a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Notwithstanding  
7 section 553 of title 5, subchapter II of chapter 5 and chapter 7 of title 5 are applicable in  
8 the administration of sections 6501 to 6507 and 6511 of this title.

9 (b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of representations  
10 and stipulations in a contract under section 6502 of this title, an interested person has the  
11 right of judicial review of any legal question which might otherwise be raised, including  
12 wage determinations and the interpretation of the terms “locality” and “open market”.

13 (c) JUDICIAL REVIEW OF WAGE DETERMINATIONS.—A person adversely affected or  
14 aggrieved by a wage determination under section 6502(1) of this title has the right of  
15 judicial review of the determination, or of the applicability of the determination, within  
16 90 days after the determination is made, in the manner provided by chapter 7 of title 5. A  
17 person adversely affected or aggrieved by a wage determination is deemed to include a  
18 person in an industry to which the determination applies that is a supplier of materials,  
19 supplies, articles, or equipment that are purchased or intended to be purchased by the  
20 Federal Government from any source.

## 21 6510. Manufacturers and regular dealers

22 (a) PRESCRIBING STANDARDS.—The Secretary may prescribe, in regulations, standards  
23 for determining whether a contractor is a manufacturer or regular dealer with respect to  
24 materials, supplies, articles, or equipment to be manufactured or furnished under, or used  
25 in the performance of, a contract entered into by an agency of the United States.

26 (b) JUDICIAL REVIEW.—An interested person has the right of judicial review of any  
27 legal question relating to interpretation of the terms “regular dealer” and “manufacturer”  
28 as defined pursuant to subsection (a).

## 29 6511. Effect on other law

30 This chapter may not be construed to modify or amend the following provisions:

- 31 (1) Chapter 83 of this title.  
32 (2) Sections 3141 to 3144, 3146, and 3147 of title 40.  
33 (3) Chapter 307 of title 18.

## 34 CHAPTER 67—SERVICE CONTRACT LABOR 35 STANDARDS

36 Sec.

37 6701. Definitions.

- 1 6702.Contracts to which this chapter applies.
- 2 6703.Required contract terms.
- 3 6704.Limitation on minimum wage.
- 4 6705.Violations.
- 5 6706.Three-year prohibition on new contracts in case of violation.
- 6 6707.Enforcement and administration of chapter.

## 7 6701.Definitions

8 In this chapter:

- 9 (1) COMPENSATION.—The term “compensation” means any of the payments or  
10 fringe benefits described in section 6703 of this title.
- 11 (2) SECRETARY.—The term “Secretary” means the Secretary of Labor.
- 12 (3) SERVICE EMPLOYEE.—The term “service employee”—
  - 13 (A) means an individual engaged in the performance of a contract made by  
14 the Federal Government and not exempted under section 6702(b) of this title,  
15 whether negotiated or advertised, the principal purpose of which is to furnish  
16 services in the United States;
  - 17 (B) includes an individual without regard to any contractual relationship  
18 alleged to exist between the individual and a contractor or subcontractor; but
  - 19 (C) does not include an individual employed in a bona fide executive,  
20 administrative, or professional capacity, as those terms are defined in part 541  
21 of title 29, Code of Federal Regulations.
- 22 (4) UNITED STATES.—The term “United States”—
  - 23 (A) includes any State of the United States, the District of Columbia, Puerto  
24 Rico, the Virgin Islands, the outer Continental Shelf as defined in the Outer  
25 Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam,  
26 Wake Island, and Johnston Island; but
  - 27 (B) does not include any other territory under the jurisdiction of the United  
28 States or any United States base or possession within a foreign country.

## 29 6702.Contracts to which this chapter applies

- 30 (a) IN GENERAL.—Except as provided in subsection (b), this chapter applies to any  
31 contract or bid specification for a contract, whether negotiated or advertised, that—
  - 32 (1) is made by the Federal Government or the District of Columbia;
  - 33 (2) involves an amount exceeding \$2,500; and
  - 34 (3) has as its principal purpose the furnishing of services in the United States  
35 through the use of service employees.
- 36 (b) EXEMPTIONS.—This chapter does not apply to—

1 (1) a contract of the Federal Government or the District of Columbia for the  
2 construction, alteration, or repair, including painting and decorating, of public  
3 buildings or public works;

4 (2) any work required to be done in accordance with chapter 65 of this title;

5 (3) a contract for the carriage of freight or personnel by vessel, airplane, bus,  
6 truck, express, railway line or oil or gas pipeline where published tariff rates are in  
7 effect;

8 (4) a contract for the furnishing of services by radio, telephone, telegraph, or cable  
9 companies, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

10 (5) a contract for public utility services, including electric light and power, water,  
11 steam, and gas;

12 (6) an employment contract providing for direct services to a Federal agency by  
13 an individual; and

14 (7) a contract with the United States Postal Service, the principal purpose of  
15 which is the operation of postal contract stations.

## 16 6703. Required contract terms

17 A contract, and bid specification for a contract, to which this chapter applies under  
18 section 6702 of this title shall contain the following terms:

19 (1) **MINIMUM WAGE.**—The contract and bid specification shall contain a provision  
20 specifying the minimum wage to be paid to each class of service employee engaged  
21 in the performance of the contract or any subcontract, as determined by the  
22 Secretary or the Secretary’s authorized representative, in accordance with prevailing  
23 rates in the locality, or, where a collective-bargaining agreement covers the service  
24 employees, in accordance with the rates provided for in the agreement, including  
25 prospective wage increases provided for in the agreement as a result of arm’s length  
26 negotiations. In any case the minimum wage may not be less than the minimum  
27 wage specified in section 6704 of this title.

28 (2) **FRINGE BENEFITS.**—The contract and bid specification shall contain a  
29 provision specifying the fringe benefits to be provided to each class of service  
30 employee engaged in the performance of the contract or any subcontract, as  
31 determined by the Secretary or the Secretary’s authorized representative to be  
32 prevailing in the locality, or, where a collective-bargaining agreement covers the  
33 service employees, to be provided for under the agreement, including prospective  
34 fringe benefit increases provided for in the agreement as a result of arm’s-length  
35 negotiations. The fringe benefits shall include medical or hospital care, pensions on  
36 retirement or death, compensation for injuries or illness resulting from occupational  
37 activity, or insurance to provide any of the foregoing, unemployment benefits, life  
38 insurance, disability and sickness insurance, accident insurance, vacation and  
39 holiday pay, costs of apprenticeship or other similar programs and other bona fide  
40 fringe benefits not otherwise required by Federal, State, or local law to be provided  
41 by the contractor or subcontractor. The obligation under this paragraph may be  
42 discharged by furnishing any equivalent combinations of fringe benefits or by

1 making equivalent or differential payments in cash under regulations established by  
2 the Secretary.

3 (3) WORKING CONDITIONS.—The contract and bid specification shall contain a  
4 provision specifying that no part of the services covered by this chapter may be  
5 performed in buildings or surroundings or under working conditions, provided by or  
6 under the control or supervision of the contractor or any subcontractor, which are  
7 unsanitary or hazardous or dangerous to the health or safety of service employees  
8 engaged to provide the services.

9 (4) NOTICE.—The contract and bid specification shall contain a provision  
10 specifying that on the date a service employee begins work on a contract to which  
11 this chapter applies, the contractor or subcontractor will deliver to the employee a  
12 notice of the compensation required under paragraphs (1) and (2), on a form  
13 prepared by the Federal agency, or will post a notice of the required compensation in  
14 a prominent place at the worksite.

15 (5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYSTEMS.—The  
16 contract and bid specification shall contain a statement of the rates that would be  
17 paid by the Federal agency to each class of service employee if section 5332 or 5341  
18 of title 5 were applicable to them. The Secretary shall give due consideration to  
19 these rates in making the wage and fringe benefit determinations specified in this  
20 section.

## 21 6704. Limitation on minimum wage

22 (a) IN GENERAL.—A contractor that makes a contract with the Federal Government,  
23 the principal purpose of which is to furnish services through the use of service  
24 employees, and any subcontractor, may not pay less than the minimum wage specified  
25 under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) to an  
26 employee engaged in performing work on the contract.

27 (b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to a violation of  
28 this section.

## 29 6705. Violations

30 (a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a violation of a  
31 contract provision required under section 6703(1) or (2) of this title or a violation of  
32 section 6704 of this title is liable for an amount equal to the sum of any deduction, rebate,  
33 refund, or underpayment of compensation due any employee engaged in the performance  
34 of the contract.

35 (b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

36 (1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The total amount  
37 determined under subsection (a) to be due any employee engaged in the performance  
38 of a contract may be withheld from accrued payments due on the contract or on any  
39 other contract between the same contractor and the Federal Government. The  
40 amount withheld shall be held in a deposit fund. On order of the Secretary, the  
41 compensation found by the Secretary or the head of a Federal agency to be due an

1 underpaid employee pursuant to this chapter shall be paid from the deposit fund  
2 directly to the underpaid employee.

3 (2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued payments  
4 withheld under the terms of the contract are insufficient to reimburse a service  
5 employee with respect to whom there has been a failure to pay the compensation  
6 required pursuant to this chapter, the Federal Government may bring action against  
7 the contractor, subcontractor, or any sureties in any court of competent jurisdiction  
8 to recover the remaining amount of underpayment. Any amount recovered shall be  
9 held in the deposit fund and shall be paid, on order of the Secretary, directly to the  
10 underpaid employee. Any amount not paid to an employee because of inability to do  
11 so within 3 years shall be covered into the Treasury as miscellaneous receipts.

12 (c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to other actions in  
13 accordance with this section, when a violation of any contract stipulation is found, the  
14 Federal agency that made the contract may cancel the contract on written notice to the  
15 original contractor. The Federal Government may then make other contracts or  
16 arrangements for the completion of the original contract, charging any additional cost to  
17 the original contractor.

18 (d) ENFORCEMENT OF SECTION.—In accordance with regulations prescribed pursuant to  
19 section 6707(a)–(d) of this title, the Secretary or the head of a Federal agency may carry  
20 out this section.

## 21 6706. Three-year prohibition on new contracts in case of 22 violation

23 (a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to each agency  
24 of the Federal Government a list containing the names of persons or firms that a Federal  
25 agency or the Secretary has found to have violated this chapter.

26 (b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends otherwise because  
27 of unusual circumstances, a Federal Government contract may not be awarded to a person  
28 or firm named on the list under subsection (a), or to an entity in which the person or firm  
29 has a substantial interest, until 3 years have elapsed from the date of publication of the  
30 list. If the Secretary does not recommend otherwise because of unusual circumstances,  
31 the Secretary shall, not later than 90 days after a hearing examiner has made a finding of  
32 a violation of this chapter, forward to the Comptroller General the name of the person or  
33 firm found to have violated this chapter.

## 34 6707. Enforcement and administration of chapter

35 (a) ENFORCEMENT OF CHAPTER.—Sections 6506 and 6507 of this title govern the  
36 Secretary's authority to enforce this chapter, including the Secretary's authority to  
37 prescribe regulations, issue orders, hold hearings, make decisions based on findings of  
38 fact, and take other appropriate action under this chapter.

39 (b) LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES, AND  
40 EXEMPTIONS.—The Secretary may provide reasonable limitations and may prescribe  
41 regulations allowing reasonable variation, tolerances, and exemptions with respect to this

1 chapter (other than subsection (f)), but only in special circumstances where the Secretary  
2 determines that the limitation, variation, tolerance, or exemption is necessary and proper  
3 in the public interest or to avoid the serious impairment of Federal Government business,  
4 and is in accord with the remedial purpose of this chapter to protect prevailing labor  
5 standards.

6 (c) PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDECESSOR CONTRACTS.—

7 (1) IN GENERAL.—Under a contract which succeeds a contract subject to this  
8 chapter, and under which substantially the same services are furnished, a contractor  
9 or subcontractor may not pay a service employee less than the wages and fringe  
10 benefits the service employee would have received under the predecessor contract,  
11 including accrued wages and fringe benefits and any prospective increases in wages  
12 and fringe benefits provided for in a collective-bargaining agreement as a result of  
13 arm’s-length negotiations.

14 (2) EXCEPTION.—This subsection does not apply if the Secretary finds after a  
15 hearing in accordance with regulations adopted by the Secretary that wages and  
16 fringe benefits under the predecessor contract are substantially at variance with  
17 wages and fringe benefits prevailing in the same locality for services of a similar  
18 character.

19 (d) DURATION OF CONTRACTS.—Subject to limitations in annual appropriation acts but  
20 notwithstanding any other law, a contract to which this chapter applies may, if authorized  
21 by the Secretary, be for any term of years not exceeding 5, if the contract provides for  
22 periodic adjustment of wages and fringe benefits pursuant to future determinations,  
23 issued in the manner prescribed in section 6703 of this title at least once every 2 years  
24 during the term of the contract, covering each class of service employee.

25 (e) EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVERTIME PAY.—In  
26 determining any overtime pay to which a service employee is entitled under Federal law,  
27 the regular or basic hourly rate of pay of the service employee does not include any fringe  
28 benefit payments computed under this chapter which are excluded from the definition of  
29 “regular rate” under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C.  
30 207(e)).

31 (f) TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.—It is the intent of  
32 Congress that determinations of minimum wages and fringe benefits under section  
33 6703(1) and (2) of this title should be made as soon as administratively feasible for all  
34 contracts subject to this chapter. In any event, the Secretary shall at least make the  
35 determinations for contracts under which more than 5 service employees are to be  
36 employed.

37 **CHAPTER 69—CONTRACT DISPUTES**

38 Sec.

39 6901. Definitions.

40 6902. Applicability of chapter.

41 6903. Decision by contracting officer.

1 6904. Contractor's right of appeal from decision by contracting officer.

2 6905. Agency boards.

3 6906. Agency board procedures for accelerated and small claims.

4 6907. Judicial review of agency board decisions.

5 6908. Payment of claims.

6 6909. Interest.

## 7 6901. Definitions

8 In this chapter:

9 (1) ADMINISTRATOR.—The term “Administrator” means the Administrator for  
10 Federal Procurement Policy appointed pursuant to section 1102 of this title.

11 (2) AGENCY BOARD.—~~THE TERM “AGENCY BOARD” MEANS AN~~ **BOARD OR** AGENCY  
12 ~~BOARD OF CONTRACT APPEALS ESTABLISHED UNDER SECTION 6905 OF THIS TITLE.~~  
13 **APPEALS.—The term “agency board” or “agency board of contract appeals”**  
14 **means—**

15 **(A) the Armed Services Board;**

16 **(B) the Civilian Board;**

17 **(C) the board of contract appeals of the Tennessee Valley Authority; or**

18 **\*\* 1 “(D)(D) the Postal Service Contract Board of Appeals established under**  
19 **section 6905(d)(1) of this title.**

20 (3) AGENCY HEAD.—The term “agency head” means the head and any assistant  
21 head of an executive agency. The term may include the chief official of a principal  
22 division of an executive agency if the head of the executive agency so designates  
23 that chief official.

24 **\*\* 2 “(4)(4) ARMED SERVICES BOARD.—The term ‘Armed’“Armed Services**  
25 **Board’ Board” means the Armed Services Board of Contract Appeals established**  
26 **under section 6905(a)(1) of this title.**

27 **\*\* 3 “(5)(5) CIVILIAN BOARD.—The term ‘Civilian Board’“Civilian Board”**  
28 **means the Civilian Board of Contract Appeals established under section 6905(b)(1)**  
29 **of this title.**

30 ~~(4)~~**(6)** CONTRACTING OFFICER.—The term “contracting officer”—

31 (A) means an individual who, by appointment in accordance with applicable  
32 regulations, has the authority to make and administer contracts and to make  
33 determinations and findings with respect to contracts; and

34 (B) includes an authorized representative of the contracting officer, acting  
35 within the limits of the representative's authority.

36 ~~(5)~~**(7)** CONTRACTOR.—The term “contractor” means a party to a Federal  
37 Government contract other than the Federal Government.

1           ~~(6)~~**(8)** EXECUTIVE AGENCY.—The term “executive agency” means—

2           (A) an executive department as defined in section 101 of title 5;

3           (B) a military department as defined in section 102 of title 5;

4           (C) an independent establishment as defined in section 104 of title 5, except  
5           that the term does not include the Government Accountability Office; **and**

6           (D) a wholly owned Government corporation as defined in section 9101(3)  
7           of title 31;

8           ~~(E) the United States Postal Service; and~~

9           ~~(F) the Postal Rate Commission.~~

10          ~~(7)~~**(9)** MISREPRESENTATION OF FACT.—The term “misrepresentation of fact”  
11          means a false statement of substantive fact, or conduct that leads to a belief of a  
12          substantive fact material to proper understanding of the matter in hand, made with  
13          intent to deceive or mislead.

## 14          6902. Applicability of chapter

15          (a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically provided in this  
16          chapter, this chapter applies to any express or implied contract (including those of the  
17          nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by  
18          an executive agency for—

19           (1) the procurement of property, other than real property in being;

20           (2) the procurement of services;

21           (3) the procurement of construction, alteration, repair, or maintenance of real  
22           property; or

23           (4) the disposal of personal property.

24          (b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

25           (1) IN GENERAL.—With respect to contracts of the Tennessee Valley Authority,  
26           this chapter applies only to contracts containing a clause that requires contract  
27           disputes to be resolved through an agency administrative process.

28           (2) EXCLUSION.—Notwithstanding any other provision of this chapter, this  
29           chapter does not apply to a contract of the Tennessee Valley Authority for the sale  
30           of fertilizer or electric power or related to the conduct or operation of the electric  
31           power system.

32          (c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CONTRACTS.—If an  
33          agency head determines that applying this chapter would not be in the public interest, this  
34          chapter does not apply to a contract with a foreign government, an agency of a foreign  
35          government, an international organization, or a subsidiary body of an international  
36          organization.

37          (d) MARITIME CONTRACTS.—Appeals under section 6907(a) of this title and actions  
38          brought under sections 6904(b) and 6907(b) **to** (f) of this title, arising out of maritime

1 contracts, are governed by ~~the Act of March 9, 1920 (known as the Suits in Admiralty~~  
2 ~~Act) (46 App. U.S.C. 741 et seq.), or the Act of March 3, 1925 (known as the Public~~  
3 ~~Vessels Act) (46 App. U.S.C. 781 et seq.) **chapter 309 or 311 of title 46**, as applicable,~~  
4 to the extent that those Acts **chapters** are not inconsistent with this chapter.

## 5 6903. Decision by contracting officer

### 6 (a) CLAIMS GENERALLY.—

7 (1) SUBMISSION OF CONTRACTOR'S CLAIMS TO CONTRACTING OFFICER.—Each  
8 claim by a contractor against the Federal Government relating to a contract shall be  
9 submitted to the contracting officer for a decision.

10 (2) CONTRACTOR'S CLAIMS IN WRITING.—Each claim by a contractor against the  
11 Federal Government relating to a contract shall be in writing.

12 (3) CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT'S CLAIMS.—Each  
13 claim by the Federal Government against a contractor relating to a contract shall be  
14 the subject of a decision by the contracting officer.

### 15 (4) TIME FOR SUBMITTING CLAIMS.—

16 (A) IN GENERAL.—Each claim by a contractor against the Federal  
17 Government relating to a contract and each claim by the Federal Government  
18 against a contractor relating to a contract shall be submitted within 6 years after  
19 the accrual of the claim.

20 (B) EXCEPTION.—This paragraph does not apply to a claim by the Federal  
21 Government against a contractor that is based on a claim by the contractor  
22 involving fraud.

23 (5) APPLICABILITY.—The authority of this subsection and subsections (c)(1), (d),  
24 and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed  
25 by statute or regulation that another Federal agency is specifically authorized to  
26 administer, settle, or determine.

### 27 (b) CERTIFICATION OF CLAIMS.—

28 (1) REQUIREMENT GENERALLY.—For claims of more than \$100,000 made by a  
29 contractor, the contractor shall certify that—

30 (A) the claim is made in good faith;

31 (B) the supporting data are accurate and complete to the best of the  
32 contractor's knowledge and belief;

33 (C) the amount requested accurately reflects the contract adjustment for  
34 which the contractor believes the Federal Government is liable; and

35 (D) the certifier is authorized to certify the claim on behalf of the contractor.

36 (2) WHO MAY EXECUTE CERTIFICATION.—The certification required by paragraph  
37 (1) may be executed by an individual authorized to bind the contractor with respect  
38 to the claim.

39 (3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—A contracting officer is

1 not obligated to render a final decision on a claim of more than \$100,000 that is not  
2 certified in accordance with paragraph (1) if, within 60 days after receipt of the  
3 claim, the contracting officer notifies the contractor in writing of the reasons why  
4 any attempted certification was found to be defective. A defect in the certification of  
5 a claim does not deprive a court or an agency board of jurisdiction over the claim.  
6 Prior to the entry of a final judgment by a court or a decision by an agency board,  
7 the court or agency board shall require a defective certification to be corrected.

8 (c) FRAUDULENT CLAIMS.—

9 (1) NO AUTHORITY TO SETTLE.—This section does not authorize an agency head to  
10 settle, compromise, pay, or otherwise adjust any claim involving fraud.

11 (2) LIABILITY OF CONTRACTOR.—If a contractor is unable to support any part of  
12 the contractor's claim and it is determined that the inability is attributable to a  
13 misrepresentation of fact or fraud by the contractor, then the contractor is liable to  
14 the Federal Government for an amount equal to the unsupported part of the claim  
15 plus all of the Federal Government's costs attributable to reviewing the unsupported  
16 part of the claim. Liability under this paragraph shall be determined within 6 years  
17 of the commission of the misrepresentation of fact or fraud.

18 (d) ISSUANCE OF DECISION.—The contracting officer shall issue a decision in writing  
19 and shall mail or otherwise furnish a copy of the decision to the contractor.

20 (e) CONTENTS OF DECISION.—The contracting officer's decision shall state the reasons  
21 for the decision reached and shall inform the contractor of the contractor's rights as  
22 provided in this chapter. Specific findings of fact are not required. If made, specific  
23 findings of fact are not binding in any subsequent proceeding.

24 (f) TIME FOR ISSUANCE OF DECISION.—

25 (1) CLAIM OF \$100,000 OR LESS.—A contracting officer shall issue a decision on  
26 any submitted claim of \$100,000 or less within 60 days from the contracting  
27 officer's receipt of a written request from the contractor that a decision be rendered  
28 within that period.

29 (2) CLAIM OF MORE THAN \$100,000.—A contracting officer shall, within 60 days  
30 of receipt of a submitted certified claim over \$100,000—

31 (A) issue a decision; or

32 (B) notify the contractor of the time within which a decision will be issued.

33 (3) GENERAL REQUIREMENT OF REASONABLENESS.—The decision of a contracting  
34 officer on submitted claims shall be issued within a reasonable time, in accordance  
35 with regulations prescribed by the agency, taking into account such factors as the  
36 size and complexity of the claim and the adequacy of information in support of the  
37 claim provided by the contractor.

38 (4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED TIME PERIOD.—  
39 A contractor may request the tribunal concerned to direct a contracting officer to  
40 issue a decision in a specified period of time, as determined by the tribunal  
41 concerned, in the event of undue delay on the part of the contracting officer.

1 (5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.—Failure by a  
2 contracting officer to issue a decision on a claim within the required time period is  
3 deemed to be a decision by the contracting officer denying the claim and authorizes  
4 an appeal or action on the claim as otherwise provided in this chapter. However, the  
5 tribunal concerned may, at its option, stay the proceedings of the appeal or action to  
6 obtain a decision by the contracting officer.

7 (g) FINALITY OF DECISION UNLESS APPEALED.—The contracting officer’s decision on a  
8 claim is final and conclusive and is not subject to review by any forum, tribunal, or  
9 Federal Government agency, unless an appeal or action is timely commenced as  
10 authorized by this chapter. This chapter does not prohibit an executive agency from  
11 including a clause in a Federal Government contract requiring that, pending final decision  
12 of an appeal, action, or final settlement, a contractor shall proceed diligently with  
13 performance of the contract in accordance with the contracting officer’s decision.

14 (h) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—

15 (1) IN GENERAL.—Notwithstanding any other provision of this chapter, a  
16 contractor and a contracting officer may use any alternative means of dispute  
17 resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable  
18 procedures, for resolving claims. All provisions of subchapter IV of chapter 5 of title  
19 5 apply to alternative means of dispute resolution under this subsection.

20 (2) CERTIFICATION OF CLAIM.—The contractor shall certify the claim when  
21 required to do so under subsection (b)(1) or other law.

22 (3) REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION.—

23 (A) CONTRACTING OFFICER.—A contracting officer who rejects a  
24 contractor’s request for alternative dispute resolution proceedings shall provide  
25 the contractor with a written explanation, citing one or more of the conditions  
26 in section 572(b) of title 5 or other specific reasons that alternative dispute  
27 resolution procedures are inappropriate.

28 (B) CONTRACTOR.—A contractor that rejects an agency’s request for  
29 alternative dispute resolution proceedings shall inform the agency in writing of  
30 the contractor’s specific reasons for rejecting the request.

## 31 6904. Contractor’s right of appeal from decision by 32 contracting officer

33 (a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the date of receipt  
34 of a contracting officer’s decision under section 6903 of this title, may appeal the  
35 decision to an agency board as provided in section 6905 of this title.

36 (b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

37 (1) IN GENERAL.—Except as provided in paragraph (2), and in lieu of appealing  
38 the decision of a contracting officer under section 6903 of this title to an agency  
39 board, a contractor may bring an action directly on the claim in the United States  
40 Court of Federal Claims, notwithstanding any contract provision, regulation, or rule  
41 of law to the contrary.

1 (2) TENNESSEE VALLEY AUTHORITY.—In the case of an action against the  
2 Tennessee Valley Authority, the contractor may only bring an action directly on the  
3 claim in a district court of the United States pursuant to section 1337 of title 28,  
4 notwithstanding any contract provision, regulation, or rule of law to the contrary.

5 (3) TIME FOR FILING.—A contractor shall file any action under paragraph (1) or  
6 (2) within 12 months from the date of receipt of a contracting officer’s decision  
7 under section 6903 of this title.

8 (4) DE NOVO.—An action under paragraph (1) or (2) shall proceed de novo in  
9 accordance with the rules of the appropriate court.

## 10 6905. Agency boards

### 11 (a) ARMED SERVICES BOARD.— Establishment.—

12 ~~(1) In general.—Except as provided in paragraph (2), an agency board of contract~~  
13 ~~appeals may be established within an executive agency when the agency head, after~~  
14 ~~consultation with the Administrator, determines from a workload study that the volume~~  
15 ~~of contract claims justifies the establishment of a full-time agency board of at least 3~~  
16 ~~members who shall have no other inconsistent duties. Workload studies will be updated~~  
17 ~~at least once every 3 years and submitted to the Administrator.~~

18 **\*\* 4 “(1)(1) ESTABLISHMENT.—**An Armed Services Board of Contract Appeals  
19 may be established within the Department of Defense when the Secretary of  
20 Defense, after consultation with the Administrator, determines from a workload  
21 study that the volume of contract claims justifies the establishment of a full-time  
22 agency board of at least 3 members who shall have no other inconsistent duties.  
23 Workload studies will be updated at least once every 3 years and submitted to the  
24 Administrator.

25 **\*\* 5 “(2)(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—**Members of the  
26 Armed Services Board shall be selected and appointed in the same manner as  
27 administrative law judges appointed pursuant to section 3105 of title 5, with an  
28 additional requirement that members must have had at least 5 years of experience in  
29 public contract law. The Secretary of Defense shall designate the chairman and vice  
30 chairman of the Armed Services Board from among the appointed members.  
31 Compensation for the chairman, vice chairman, and other members shall be  
32 determined under section 5372a of title 5.

### 33 (b) CIVILIAN BOARD.—

34 **\*\* 6 “(1)(1) ESTABLISHMENT.—**There is established in the General Services  
35 Administration the Civilian Board of Contract Appeals.

#### 36 (2) MEMBERSHIP.—

37 **\*\* 7 “(A)(A) ELIGIBILITY.—**The Civilian Board consists of members  
38 appointed by the Administrator of General Services (in consultation with the  
39 Administrator) from a register of applicants maintained by the Administrator of  
40 General Services, in accordance with rules issued by the Administrator of  
41 General Services (in consultation with the Administrator) for establishing and

1 maintaining a register of eligible applicants and selecting Civilian Board  
2 members. The Administrator of General Services shall appoint a member  
3 without regard to political affiliation and solely on the basis of the professional  
4 qualifications required to perform the duties and responsibilities of a Civilian  
5 Board member.

6 **\*\* 8 ~~“(B)(B)~~ APPOINTMENT OF MEMBERS AND COMPENSATION.**—Members of  
7 the Civilian Board shall be selected and appointed to serve in the same manner  
8 as administrative law judges appointed pursuant to section 3105 of title 5, with  
9 an additional requirement that members must have had at least 5 years  
10 experience in public contract law. Compensation for the members shall be  
11 determined under section 5372a of title 5.

12 **\*\* 9 ~~“(C)(C)~~ INDIVIDUALS WHO SHALL SERVE AS BOARD MEMBERS.**—  
13 Notwithstanding subparagraph (B), any full-time member of an agency board  
14 of contract appeals, other than the Armed Services Board, the Postal Service  
15 Board of Contract Appeals, and the board of contract appeals of the Tennessee  
16 Valley Authority, serving in that capacity on January 5, 2007, shall serve as  
17 Civilian Board members.

18 **\*\* 10 ~~“(3)(3)~~ REMOVAL.**—Members of the Civilian Board are subject to removal  
19 in the same manner as administrative law judges, as provided in section 7521 of title  
20 5.

21 **(4) FUNCTIONS.**—

22 **\*\* 11 ~~“(A)(A)~~ IN GENERAL.**—The Civilian Board has jurisdiction as  
23 provided by subsection (e)(1)(B).

24 **\*\* 12 ~~“(B)(B)~~ ADDITIONAL JURISDICTION.**—With the concurrence of the  
25 Federal agencies affected, the Civilian Board may assume—

26 **\*\* 13 ~~“(i)(i)~~ jurisdiction over any additional category of laws or**  
27 **disputes over which an agency board of contract appeals established**  
28 **pursuant to ~~this section or~~ section 8 of the Contract Disputes Act exercised**  
29 **jurisdiction before January 6, 2007; and**

30 **\*\* 14 ~~“(ii)(ii)~~ any other function the agency board performed before**  
31 **January 6, 2007, on behalf of ~~such~~ **those** agencies.**

32 **(c) TENNESSEE VALLEY AUTHORITY BOARD.**—

33 **(1) ESTABLISHMENT.**—~~The~~~~(2) Tennessee valley authority.~~—The Board of  
34 Directors of the Tennessee Valley Authority may establish ~~an agency a~~ a board of  
35 contract appeals ~~for~~ **of** the **Tennessee Valley** Authority of an indeterminate number  
36 of members.

37 ~~(3) Guidelines.~~—~~The Administrator, pursuant to the authority conferred under~~  
38 ~~part B of subtitle I of this title and as necessary or desirable to carry out this chapter,~~  
39 ~~shall issue guidelines with respect to the establishment, functions, and procedures of~~  
40 ~~agency boards, except for the agency board established by the Tennessee Valley~~  
41 ~~Authority.~~

1 (b) Appointment of Members and Compensation.—

2 (1) In general.—Except as provided in paragraph (2), members of an agency  
3 board shall be selected and appointed in the same manner as administrative law  
4 judges appointed pursuant to section 3105 of title 5, with an additional requirement  
5 that members of an agency board must have had at least 5 years of experience in  
6 public contract law. A chairman and vice chairman of each agency board shall be  
7 designated by the agency head from among the appointed members. Compensation  
8 for the chairman, vice chairman, and other members shall be determined under  
9 section 5372a of title 5.

10 (2) Tennessee valley authority.—The **(2) APPOINTMENT OF MEMBERS AND**  
11 **COMPENSATION.—The** Board of Directors of the Tennessee Valley Authority shall  
12 establish criteria for the appointment of members to the agency board established  
13 under subsection (a)(2) **paragraph (1)**, and shall designate a chairman of the agency  
14 board. The chairman and other members of the agency board shall receive  
15 compensation, at the daily equivalent of the rates determined under section 5372a of  
16 title 5, for each day they are engaged in the actual performance of their duties as  
17 members of the agency board.

18 (c) Inter Agency Arrangements.—If the volume of contract claims is not sufficient to  
19 justify an agency board under subsection (a), or if an agency head otherwise considers it  
20 appropriate, the agency head shall arrange for appeals from decisions by contracting  
21 officers of the agency to be decided by the agency board of another executive agency. If  
22 an agency head is unable to make such an arrangement, the agency head shall submit any  
23 appeals to the Administrator for placement with an agency board. This subsection does  
24 not apply to the Tennessee Valley Authority.

25 (d) Jurisdiction.—

26 (1) In general.—Each agency board has jurisdiction to decide any appeal from the  
27 decision of a contracting officer, relative to a contract made by—

28 (A) the agency board's own agency; or

29 (B) another agency, if the other agency or the Administrator designates the agency  
30 board to decide the appeal pursuant to subsection (c). **(d) POSTAL SERVICE BOARD.—**

31 **\*\* 15 “(1)(1) ESTABLISHMENT.—**There is established an agency board of contract  
32 appeals known as the Postal Service Board of Contract Appeals.

33 **\*\* 16 “(2)(2) APPOINTMENT AND SERVICE OF MEMBERS.—**The Postal Service  
34 Board of Contract Appeals consists of judges appointed by the Postmaster General.  
35 The judges shall meet the qualifications of and serve in the same manner as  
36 members of the Civilian Board.

37 **\*\* 17 “(3)(3) APPLICATION.—**This chapter applies to contract disputes before the  
38 Postal Service Board of Contract Appeals in the same manner as it applies to  
39 contract disputes before the Civilian Board.

40 **(e) JURISDICTION.—**

41 **(1) IN GENERAL.—**

1           \*\* 18 ~~“(A)(A)~~ **(A)** ARMED SERVICES BOARD.—The Armed Services Board has  
2 jurisdiction to decide any appeal from a decision of a contracting officer of the  
3 Department of Defense, the Department of the Army, the Department of the  
4 Navy, the Department of the Air Force, or the National Aeronautics and Space  
5 Administration relative to a contract made by that department or agency.

6           \*\* 19 ~~“(B)(B)~~ **(B)** CIVILIAN BOARD.—The Civilian Board has jurisdiction to  
7 decide any appeal from a decision of a contracting officer of any executive  
8 agency (other than the Department of Defense, the Department of the Army,  
9 the Department of the Navy, the Department of the Air Force, the National  
10 Aeronautics and Space Administration, the United States Postal Service, the  
11 Postal Rate **Regulatory** Commission, or the Tennessee Valley Authority)  
12 relative to a contract made by that agency.

13           \*\* 20 ~~“(C)(C)~~ **(C)** POSTAL SERVICE BOARD.~~THE BOARD.~~—**The** Postal Service  
14 Board of Contract Appeals has jurisdiction to decide any appeal from a  
15 decision of a contracting officer of the United States Postal Service or the  
16 Postal Rate **Regulatory** Commission relative to a contract made by either  
17 agency.

18           \*\* 21 ~~“(D)(D)~~ **(D)** OTHER AGENCY BOARDS.—Each other agency board has  
19 jurisdiction to decide any appeal from a decision of a contracting officer  
20 relative to a contract made by its agency.

21           (2) RELIEF.—In exercising this jurisdiction, an agency board may grant any relief  
22 that would be available to a litigant asserting a contract claim in the United States  
23 Court of Federal Claims.

24           ~~(e)~~**(f)** SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency board **of**  
25 **contract appeals** may administer oaths to witnesses, authorize depositions and discovery  
26 proceedings, and require by subpoena the attendance of witnesses, and production of  
27 books and papers, for the taking of testimony or evidence by deposition or in the hearing  
28 of an appeal by the agency board. In case of contumacy or refusal to obey a subpoena by  
29 a person who resides, is found, or transacts business within the jurisdiction of a United  
30 States district court, the court, upon application of the agency board through the Attorney  
31 General, or upon application by the ~~agency~~ board **of contract appeals** of the Tennessee  
32 Valley Authority, shall have jurisdiction to issue the person an order requiring the person  
33 to appear before the agency board or a member of the agency board, to produce evidence  
34 or to give testimony, or both. Any failure of the person to obey the order of the court may  
35 be punished by the court as contempt of court.

36           ~~(f)~~**(g)** DECISIONS.—An agency board shall—

37           (1) to the fullest extent practicable provide informal, expeditious, and inexpensive  
38 resolution of disputes;

39           (2) issue a decision in writing or take other appropriate action on each appeal  
40 submitted; and

41           (3) mail or otherwise furnish a copy of the decision to the contractor and the  
42 contracting officer.

1 6906. Agency board procedures for accelerated and small  
2 claims

3 (a) ACCELERATED PROCEDURE WHERE \$100,000 OR LESS IN DISPUTE.—The rules of  
4 each agency board shall include a procedure for the accelerated disposition of any appeal  
5 from a decision of a contracting officer where the amount in dispute is \$100,000 or less.  
6 The accelerated procedure is applicable at the sole election of the contractor. An appeal  
7 under the accelerated procedure shall be resolved, whenever possible, within 180 days  
8 from the date the contractor elects to use the procedure.

9 (b) SMALL CLAIMS ~~PROCEDURE WHERE \$50,000 OR LESS IN DISPUTE.—~~  
10 **PROCEDURE.—**

11 (1) IN GENERAL.—The rules of each agency board shall include a procedure for  
12 the expedited disposition of any appeal from a decision of a contracting officer  
13 where the amount in dispute is \$50,000 or less, **or in the case of a small business**  
14 **concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and**  
15 **regulations under that Act), \$150,000 or less.** The small claims procedure is  
16 applicable at the sole election of the contractor.

17 (2) SIMPLIFIED RULES OF PROCEDURE.—The small claims procedure shall provide  
18 for simplified rules of procedure to facilitate the decision of any appeal. An appeal  
19 under the small claims procedure may be decided by a single member of the agency  
20 board with such concurrences as may be provided by rule or regulation.

21 (3) TIME OF DECISION.—An appeal under the small claims procedure shall be  
22 resolved, whenever possible, within 120 days from the date the contractor elects to  
23 use the procedure.

24 (4) FINALITY OF DECISION.—A decision against the Federal Government or  
25 against the contractor reached under the small claims procedure is final and  
26 conclusive and may not be set aside except in cases of fraud.

27 (5) NO PRECEDENT.—Administrative determinations and final decisions under this  
28 subsection have no value as precedent for future cases under this chapter.

29 (6) REVIEW OF REQUISITE AMOUNT IN CONTROVERSY.—The Administrator, from  
30 time to time, may review the dollar amount specified in paragraph (1) and adjust the  
31 amount in accordance with economic indexes selected by the Administrator.

32 6907. Judicial review of agency board decisions

33 (a) REVIEW.—

34 (1) IN GENERAL.—The decision of an agency board is final, except that—

35 (A) a contractor may appeal the decision to the United States Court of  
36 Appeals for the Federal Circuit within 120 days from the date the contractor  
37 receives a copy of the decision; or

38 (B) if an agency head determines that an appeal should be taken, the agency  
39 head, with the prior approval of the Attorney General, may transmit the

1 decision to the United States Court of Appeals for the Federal Circuit for  
2 judicial review under section 1295 of title 28, within 120 days from the date the  
3 agency receives a copy of the decision.

4 (2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph (1), a decision  
5 of the agency board **of contract appeals** of the Tennessee Valley Authority is final,  
6 except that—

7 (A) a contractor may appeal the decision to a United States district court  
8 pursuant to section 1337 of title 28, within 120 days from the date the  
9 contractor receives a copy of the decision; or

10 (B) the Tennessee Valley Authority may appeal the decision to a United  
11 States district court pursuant to section 1337 of title 28, within 120 days from  
12 the date of the decision.

13 (3) REVIEW OF ARBITRATION.—An award by an arbitrator under this chapter shall  
14 be reviewed pursuant to sections 9 to 13 of title 9, except that the court may set aside  
15 or limit any award that is found to violate limitations imposed by Federal statute.

16 (b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW AND FACT.—  
17 Notwithstanding any contract provision, regulation, or rule of law to the contrary, in an  
18 appeal by a contractor or the Federal Government from the decision of an agency board  
19 pursuant to subsection (a)—

20 (1) the decision of the agency board on a question of law is not final or  
21 conclusive; but

22 (2) the decision of the agency board on a question of fact is final and conclusive  
23 and may not be set aside unless the decision is—

24 (A) fraudulent, arbitrary, or capricious;

25 (B) so grossly erroneous as to necessarily imply bad faith; or

26 (C) not supported by substantial evidence.

27 (c) REMAND.—In an appeal by a contractor or the Federal Government from the  
28 decision of an agency board pursuant to subsection (a), the court may render an opinion  
29 and judgment and remand the case for further action by the agency board or by the  
30 executive agency as appropriate, with direction the court considers just and proper.

31 (d) CONSOLIDATION.—If 2 or more actions arising from one contract are filed in the  
32 United States Court of Federal Claims and one or more agency boards, for the  
33 convenience of parties or witnesses or in the interest of justice, the United States Court of  
34 Federal Claims may order the consolidation of the actions in that court or transfer any  
35 actions to or among the agency boards involved.

36 (e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an action filed  
37 pursuant to this chapter involving 2 or more claims, counterclaims, cross-claims, or third-  
38 party claims, and where a portion of one of the claims can be divided for purposes of  
39 decision or judgment, and in any action where multiple parties are involved, the court,  
40 whenever appropriate, may enter a judgment as to one or more but fewer than all of the  
41 claims or portions of claims or parties.

1 (f) ADVISORY OPINIONS.—

2 (1) IN GENERAL.—Whenever an action involving an issue described in paragraph  
3 (2) is pending in a district court of the United States, the district court may request  
4 an agency board to provide the court with an advisory opinion on the matters of  
5 contract interpretation under consideration.

6 (2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is any issue that  
7 could be the proper subject of a final decision of a contracting officer appealable  
8 under this chapter.

9 (3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district court shall  
10 direct a request under paragraph (1) to the agency board having jurisdiction under  
11 this chapter to adjudicate appeals of contract claims under the contract being  
12 interpreted by the court.

13 (4) TIMELY RESPONSE.—After receiving a request for an advisory opinion under  
14 paragraph (1), an agency board shall provide the advisory opinion in a timely  
15 manner to the district court making the request.

16 **6908. Payment of claims**

17 (a) JUDGMENTS.—Any judgment against the Federal Government on a claim under this  
18 chapter shall be paid promptly in accordance with the procedures provided by section  
19 1304 of title 31.

20 (b) MONETARY AWARDS.—Any monetary award to a contractor by an agency board  
21 shall be paid promptly in accordance with the procedures contained in subsection (a).

22 (c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and (b) shall be  
23 reimbursed to the fund provided by section 1304 of title 31 by the agency whose  
24 appropriations were used for the contract out of available amounts or by obtaining  
25 additional appropriations for purposes of reimbursement.

26 (d) TENNESSEE VALLEY AUTHORITY.—

27 (1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judgment against  
28 the Tennessee Valley Authority on a claim under this chapter shall be paid promptly  
29 in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16  
30 U.S.C. 831h(b)).

31 (2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c), any monetary  
32 award to a contractor by the agency board **of contract appeals** of the Tennessee  
33 Valley Authority shall be paid in accordance with section 9(b) of the Tennessee  
34 Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

35 **6909. Interest**

36 (a) PERIOD.—

37 (1) IN GENERAL.—Interest on an amount found due a contractor on a claim shall  
38 be paid to the contractor for the period beginning with the date the contracting  
39 officer receives the contractor's claim, pursuant to section 6903(a) of this title, until

1 the date of payment of the claim.

2 (2) DEFECTIVE CERTIFICATION.—On a claim for which the certification under  
3 section 6903(b)(1) of this title is found to be defective, any interest due under this  
4 section shall be paid for the period beginning with the date the contracting officer  
5 initially receives the contractor’s claim until the date of payment of the claim.

6 (b) RATE.—Interest shall accrue and be paid at a rate which the Secretary of the  
7 Treasury shall specify as applicable for each successive 6-month period. The rate shall be  
8 determined by the Secretary of the Treasury taking into consideration current private  
9 commercial rates of interest for new loans maturing in approximately 5 years.

## 10 Subtitle III—Miscellaneous

11 Chapter

12 Sec.

13 81.

14 Drug-Free Workplace

15 8101

16 83.

17 Buy American

18 8301

19 85.

20 Committee for Purchase From People Who Are Blind or Severely Disabled

21 8501

22 87.

23 Kickbacks

24 8701

## 25 CHAPTER 81—DRUG-FREE WORKPLACE

26 Sec.

27 8101. Definitions and construction.

28 8102. Drug-free workplace requirements for Federal contractors.

29 8103. Drug-free workplace requirements for Federal grant recipients.

30 8104. Employee sanctions and remedies.

31 8105. Waiver.

32 8106. Regulations.

33 8101. Definitions and construction

1 (a) DEFINITIONS.—In this chapter:

2 (1) CONTRACTOR.—The term “contractor” means the department, division, or  
3 other unit of a person responsible for the performance under the contract.

4 (2) CONTROLLED SUBSTANCE.—The term “controlled substance” means a  
5 controlled substance in schedules I through V of section 202 of the Comprehensive  
6 Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

7 (3) CONVICTION.—The term “conviction” means a finding of guilt (including a  
8 plea of nolo contendere), an imposition of sentence, or both, by a judicial body  
9 charged with the responsibility to determine violations of Federal or State criminal  
10 drug statutes.

11 (4) CRIMINAL DRUG STATUTE.—The term “criminal drug statute” means a  
12 criminal statute involving manufacture, distribution, dispensation, use, or possession  
13 of a controlled substance.

14 (5) DRUG-FREE WORKPLACE.—The term “drug-free workplace” means a site of an  
15 entity—

16 (A) for the performance of work done in connection with a specific contract  
17 or grant described in section 8102 or 8103 of this title; and

18 (B) at which employees of the entity are prohibited from engaging in the  
19 unlawful manufacture, distribution, dispensation, possession, or use of a  
20 controlled substance in accordance with the requirements of the Anti-Drug  
21 Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4181).

22 (6) EMPLOYEE.—The term “employee” means the employee of a contractor or  
23 grantee directly engaged in the performance of work pursuant to the contract or  
24 grant described in section 8102 or 8103 of this title.

25 (7) FEDERAL AGENCY.—The term “Federal agency” means an agency as defined  
26 in section 552(f) of title 5.

27 (8) GRANTEE.—The term “grantee” means the department, division, or other unit  
28 of a person responsible for the performance under the grant.

29 (b) CONSTRUCTION.—This chapter does not require law enforcement agencies to  
30 comply with this chapter if the head of the agency determines it would be inappropriate  
31 in connection with the agency’s undercover operations.

## 32 8102. Drug-free workplace requirements for Federal 33 contractors

34 (a) IN GENERAL.—

35 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall  
36 not be considered a responsible source (as defined in section 113 of this title) for the  
37 purposes of being awarded a contract for the procurement of any property or  
38 services of a value greater than the simplified acquisition threshold (as defined in  
39 section 134 of this title) by a Federal agency, other than a contract for the

1 procurement of commercial items (as defined in section 103 of this title), unless the  
2 person agrees to provide a drug-free workplace by—

3 (A) publishing a statement notifying employees that the unlawful  
4 manufacture, distribution, dispensation, possession, or use of a controlled  
5 substance is prohibited in the person’s workplace and specifying the actions  
6 that will be taken against employees for violations of the prohibition;

7 (B) establishing a drug-free awareness program to inform employees  
8 about—

9 (i) the dangers of drug abuse in the workplace;

10 (ii) the person’s policy of maintaining a drug-free workplace;

11 (iii) available drug counseling, rehabilitation, and employee assistance  
12 programs; and

13 (iv) the penalties that may be imposed on employees for drug abuse  
14 violations;

15 (C) making it a requirement that each employee to be engaged in the  
16 performance of the contract be given a copy of the statement required by  
17 subparagraph (A);

18 (D) notifying the employee in the statement required by subparagraph (A)  
19 that as a condition of employment on the contract the employee will—

20 (i) abide by the terms of the statement; and

21 (ii) notify the employer of any criminal drug statute conviction for a  
22 violation occurring in the workplace no later than 5 days after the  
23 conviction;

24 (E) notifying the contracting agency within 10 days after receiving notice  
25 under subparagraph (D)(ii) from an employee or otherwise receiving actual  
26 notice of a conviction;

27 (F) imposing a sanction on, or requiring the satisfactory participation in a  
28 drug abuse assistance or rehabilitation program by, any employee who is  
29 convicted, as required by section 8104 of this title; and

30 (G) making a good faith effort to continue to maintain a drug-free workplace  
31 through implementation of subparagraphs (A) to (F).

32 (2) INDIVIDUALS.—A Federal agency shall not make a contract with an individual  
33 unless the individual agrees not to engage in the unlawful manufacture, distribution,  
34 dispensation, possession, or use of a controlled substance in the performance of the  
35 contract.

36 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

37 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a  
38 contract awarded by a Federal agency may be suspended and the contract may be  
39 terminated, and the contractor or individual who made the contract with the agency  
40 may be suspended or debarred in accordance with the requirements of this section, if

1 the head of the agency determines that—

2 (A) the contractor is violating, or has violated, the requirements of  
3 subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

4 (B) the number of employees of the contractor who have been convicted of  
5 violations of criminal drug statutes for violations occurring in the workplace  
6 indicates that the contractor has failed to make a good faith effort to provide a  
7 drug-free workplace as required by subsection (a).

8 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A  
9 contracting officer who determines in writing that cause for suspension of payments,  
10 termination, or suspension or debarment exists shall initiate an appropriate action, to  
11 be conducted by the agency concerned in accordance with the Federal Acquisition  
12 Regulation and applicable agency procedures. The Federal Acquisition Regulation  
13 shall be revised to include rules for conducting suspension and debarment  
14 proceedings under this subsection, including rules providing notice, opportunity to  
15 respond in writing or in person, and other procedures as may be necessary to provide  
16 a full and fair proceeding to a contractor or individual.

17 (3) EFFECT OF DEBARMENT.—A contractor or individual debarred by a final  
18 decision under this subsection is ineligible for award of a contract by a Federal  
19 agency, and for participation in a future procurement by a Federal agency, for a  
20 period specified in the decision, not to exceed 5 years.

## 21 8103. Drug-free workplace requirements for Federal grant 22 recipients

23 (a) IN GENERAL.—

24 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall  
25 not receive a grant from a Federal agency unless the person agrees to provide a  
26 drug-free workplace by—

27 (A) publishing a statement notifying employees that the unlawful  
28 manufacture, distribution, dispensation, possession, or use of a controlled  
29 substance is prohibited in the grantee's workplace and specifying the actions  
30 that will be taken against employees for violations of the prohibition;

31 (B) establishing a drug-free awareness program to inform employees  
32 about—

33 (i) the dangers of drug abuse in the workplace;

34 (ii) the grantee's policy of maintaining a drug-free workplace;

35 (iii) available drug counseling, rehabilitation, and employee assistance  
36 programs; and

37 (iv) the penalties that may be imposed on employees for drug abuse  
38 violations;

39 (C) making it a requirement that each employee to be engaged in the

1 performance of the grant be given a copy of the statement required by  
2 subparagraph (A);

3 (D) notifying the employee in the statement required by subparagraph (A)  
4 that as a condition of employment in the grant the employee will—

5 (i) abide by the terms of the statement; and

6 (ii) notify the employer of any criminal drug statute conviction for a  
7 violation occurring in the workplace no later than 5 days after the  
8 conviction;

9 (E) notifying the granting agency within 10 days after receiving notice under  
10 subparagraph (D)(ii) from an employee or otherwise receiving actual notice of  
11 a conviction;

12 (F) imposing a sanction on, or requiring the satisfactory participation in a  
13 drug abuse assistance or rehabilitation program by, any employee who is  
14 convicted, as required by section 8104 of this title; and

15 (G) making a good faith effort to continue to maintain a drug-free workplace  
16 through implementation of subparagraphs (A) to (F).

17 (2) INDIVIDUALS.—A Federal agency shall not make a grant to an individual  
18 unless the individual agrees not to engage in the unlawful manufacture, distribution,  
19 dispensation, possession, or use of a controlled substance in conducting an activity  
20 with the grant.

21 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

22 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a  
23 grant awarded by a Federal agency may be suspended and the grant may be  
24 terminated, and the grantee may be suspended or debarred, in accordance with the  
25 requirements of this section, if the head of the agency or the official designee of the  
26 head of the agency determines in writing that—

27 (A) the grantee is violating, or has violated, the requirements of  
28 subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

29 (B) the number of employees of the grantee who have been convicted of  
30 violations of criminal drug statutes for violations occurring in the workplace  
31 indicates that the grantee has failed to make a good faith effort to provide a  
32 drug-free workplace as required by subsection (a)(1).

33 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A  
34 suspension of payments, termination, or suspension or debarment proceeding subject  
35 to this subsection shall be conducted in accordance with applicable law, including  
36 Executive Order 12549 or any superseding executive order and any regulations  
37 prescribed to implement the law or executive order.

38 (3) EFFECT OF DEBARMENT.—A grantee debarred by a final decision under this  
39 subsection is ineligible for award of a grant by a Federal agency, and for  
40 participation in a future grant by a Federal agency, for a period specified in the  
41 decision, not to exceed 5 years.

1 **8104.Employee sanctions and remedies**

2 Within 30 days after receiving notice from an employee of a conviction pursuant to  
3 section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a contractor or grantee shall—

4 (1) take appropriate personnel action against the employee, up to and including  
5 termination; or

6 (2) require the employee to satisfactorily participate in a drug abuse assistance or  
7 rehabilitation program approved for those purposes by a Federal, State, or local  
8 health, law enforcement, or other appropriate agency.

9 **8105.Waiver**

10 (a) IN GENERAL.—The head of an agency may waive a suspension of payments,  
11 termination of the contract or grant, or suspension or debarment of a contractor or grantee  
12 under this chapter with respect to a particular contract or grant if—

13 (1) in the case of a contract, the head of the agency determines under section  
14 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1),  
15 that suspension of payments, termination of the contract, suspension or debarment  
16 of the contractor, or refusal to permit a person to be treated as a responsible source  
17 for a contract would severely disrupt the operation of the agency to the detriment of  
18 the Federal Government or the general public; or

19 (2) in the case of a grant, the head of the agency determines that suspension of  
20 payments, termination of the grant, or suspension or debarment of the grantee would  
21 not be in the public interest.

22 (b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of the head of an  
23 agency under this section to waive a suspension, termination, or debarment shall not be  
24 delegated.

25 **8106.Regulations**

26 Government-wide regulations governing actions under this chapter shall be issued  
27 pursuant to ~~part~~ **division** B of subtitle I of this title.

28 **CHAPTER 83—BUY AMERICAN**

29 Sec.

30 8301.Definitions.

31 8302.American materials required for public use.

32 8303.Contracts for public works.

33 8304.Waiver rescission.

34 8305.Annual report.

35 **8301.Definitions**

36 In this chapter:

1 (1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms “public  
2 building”, “public use”, and “public work” mean a public building of, use by, and a  
3 public work of, the Federal Government, the District of Columbia, Puerto Rico,  
4 American Samoa, and the Virgin Islands.

5 (2) UNITED STATES.—The term “United States” includes any place subject to the  
6 jurisdiction of the United States.

## 7 8302. American materials required for public use

8 (a) IN GENERAL.—Only unmanufactured articles, materials, and supplies that have  
9 been mined or produced in the United States, and only manufactured articles, materials,  
10 and supplies that have been manufactured in the United States substantially all from  
11 articles, materials, or supplies mined, produced, or manufactured in the United States,  
12 shall be acquired for public use unless the head of the department or independent  
13 establishment concerned determines their acquisition to be inconsistent with the public  
14 interest or their cost to be unreasonable.

15 (b) EXCEPTIONS.—This section does not apply—

16 (1) to articles, materials, or supplies for use outside the United States;

17 (2) if articles, materials, or supplies of the class or kind to be used, or the articles,  
18 materials, or supplies from which they are manufactured, are not mined, produced,  
19 or manufactured in the United States in sufficient and reasonably available  
20 commercial quantities and are not of a satisfactory quality; and

21 (3) to manufactured articles, materials, or supplies procured under any contract  
22 with an award value that is not more than the micro-purchase threshold under  
23 section 1902 of this title.

## 24 8303. Contracts for public works

25 (a) IN GENERAL.—Every contract for the construction, alteration, or repair of any  
26 public building or public work in the United States shall contain a provision that in the  
27 performance of the work the contractor, subcontractors, material men, or suppliers shall  
28 use only—

29 (1) unmanufactured articles, materials, and supplies that have been mined or  
30 produced in the United States; and

31 (2) manufactured articles, materials, and supplies that have been manufactured in  
32 the United States substantially all from articles, materials, or supplies mined,  
33 produced, or manufactured in the United States.

34 (b) EXCEPTIONS.—

35 (1) IN GENERAL.—This section does not apply—

36 (A) to articles, materials, or supplies for use outside the United States;

37 (B) if articles, materials, or supplies of the class or kind to be used, or the  
38 articles, materials, or supplies from which they are manufactured, are not  
39 mined, produced, or manufactured in the United States in sufficient and

1 reasonably available commercial quantities and are not of a satisfactory quality;  
2 and

3 (C) to manufactured articles, materials, or supplies procured under any  
4 contract with an award value that is not more than the micro-purchase threshold  
5 under section 1902 of this title.

6 (2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of the department  
7 or independent establishment making the contract finds that it is impracticable to  
8 comply with subsection (a) for a particular article, material, or supply or that it  
9 would unreasonably increase the cost, an exception shall be noted in the  
10 specifications for that article, material, or supply and a public record of the findings  
11 that justified the exception shall be made.

12 (3) INCONSISTENT WITH PUBLIC INTEREST.—Subsection (a) shall be regarded as  
13 requiring the purchase, for public use within the United States, of articles, materials,  
14 or supplies manufactured in the United States in sufficient and reasonably available  
15 commercial quantities and of a satisfactory quality, unless the head of the  
16 department or independent establishment concerned determines their purchase to be  
17 inconsistent with the public interest or their cost to be unreasonable.

18 (c) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bureau, agency, or  
19 independent establishment that has made a contract containing the provision required by  
20 subsection (a) finds that there has been a failure to comply with the provision in the  
21 performance of the contract, the head of the department, bureau, agency, or independent  
22 establishment shall make the findings public. The findings shall include the name of the  
23 contractor obligated under the contract. The contractor, and any subcontractor, material  
24 man, or supplier associated or affiliated with the contractor, shall not be awarded another  
25 contract for the construction, alteration, or repair of any public building or public work  
26 for 3 years after the findings are made public.

## 27 8304. Waiver rescission

28 (a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b) is a reciprocal  
29 defense procurement memorandum of understanding between the United States and a  
30 foreign country pursuant to which the Secretary of Defense has prospectively waived this  
31 chapter for certain products in that country.

32 (b) DETERMINATION BY SECRETARY OF DEFENSE.—If the Secretary of Defense, after  
33 consultation with the United States Trade Representative, determines that a foreign  
34 country that is party to an agreement described in subsection (a) has violated the  
35 agreement by discriminating against certain types of products produced in the United  
36 States that are covered by the agreement, the Secretary of Defense shall rescind the  
37 Secretary's blanket waiver of this chapter with respect to those types of products  
38 produced in that country.

## 39 8305. Annual report

40 Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall  
41 submit to Congress a report on the amount of purchases by the Department of Defense  
42 from foreign entities in that fiscal year. The report shall separately indicate the dollar

1 value of items for which this chapter was waived pursuant to—

2 (1) a reciprocal defense procurement memorandum of understanding described in  
3 section 8304(a) of this title;

4 (2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

5 (3) an international agreement to which the United States is a party.

6 **CHAPTER 85—COMMITTEE FOR PURCHASE FROM**  
7 **PEOPLE WHO ARE BLIND OR SEVERELY**  
8 **DISABLED**

9 Sec.

10 8501. Definitions.

11 8502. Committee for Purchase From People Who Are Blind or Severely Disabled.

12 8503. Duties and powers of the Committee.

13 8504. Procurement requirements for the Federal Government.

14 8505. Audit.

15 8506. Authorization of appropriations.

16 **8501. Definitions**

17 In this chapter:

18 (1) **BLIND.**—The term “blind” refers to an individual or class of individuals whose  
19 central visual acuity does not exceed 20/200 in the better eye with correcting lenses  
20 or whose visual acuity, if better than 20/200, is accompanied by a limit to the field  
21 of vision in the better eye to such a degree that its widest diameter subtends an angle  
22 of no greater than 20 degrees.

23 (2) **COMMITTEE.**—The term “Committee” means the Committee for Purchase  
24 From People Who Are Blind or Severely Disabled established under section 8502 of  
25 this title.

26 (3) **DIRECT LABOR.**—The term “direct labor”—

27 (A) includes all work required for preparation, processing, and packing of a  
28 product, or work directly relating to the performance of a service; but

29 (B) does not include supervision, administration, inspection, or shipping.

30 (4) **ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERNMENT.**—The  
31 terms “entity of the Federal Government” and “Federal Government” include an  
32 entity of the legislative or judicial branch, a military department or executive agency  
33 (as defined in sections 102 and 105 of title 5, respectively), the United States Postal  
34 Service, and a nonappropriated fund instrumentality under the jurisdiction of the  
35 Armed Forces.

36 (5) **OTHER SEVERELY DISABLED.**—The term “other severely disabled” means an

1 individual or class of individuals under a physical or mental disability, other than  
2 blindness, which (according to criteria established by the Committee after  
3 consultation with appropriate entities of the Federal Government and taking into  
4 account the views of non-Federal Government entities representing the disabled)  
5 constitutes a substantial handicap to employment and is of a nature that prevents the  
6 individual from currently engaging in normal competitive employment.

7 (6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DISABLED.—The term  
8 “qualified nonprofit agency for other severely disabled” means an agency—

9 (A)(i) organized under the laws of the United States or a State;

10 (ii) operated in the interest of severely disabled individuals who are not  
11 blind; and

12 (iii) of which no part of the net income of the agency inures to the benefit of  
13 a shareholder or other individual;

14 (B) that complies with any applicable occupational health and safety  
15 standard prescribed by the Secretary of Labor; and

16 (C) that in the production of products and in the provision of services  
17 (whether or not the products or services are procured under this chapter) during  
18 the fiscal year employs blind or other severely disabled individuals for at least  
19 75 percent of the hours of direct labor required for the production or provision  
20 of the products or services.

21 (7) QUALIFIED NONPROFIT AGENCY FOR THE BLIND.—The term “qualified  
22 nonprofit agency for the blind” means an agency—

23 (A)(i) organized under the laws of the United States or a State;

24 (ii) operated in the interest of blind individuals; and

25 (iii) of which no part of the net income of the agency inures to the benefit of  
26 a shareholder or other individual;

27 (B) that complies with any applicable occupational health and safety  
28 standard prescribed by the Secretary of Labor; and

29 (C) that in the production of products and in the provision of services  
30 (whether or not the products or services are procured under this chapter) during  
31 the fiscal year employs blind individuals for at least 75 percent of the hours of  
32 direct labor required for the production or provision of the products or services.

33 (8) SEVERELY DISABLED INDIVIDUAL.—The term “severely disabled individual”  
34 means an individual or class of individuals under a physical or mental disability,  
35 other than blindness, which (according to criteria established by the Committee after  
36 consultation with appropriate entities of the Federal Government and taking into  
37 account the views of non-Federal Government entities representing the disabled)  
38 constitutes a substantial handicap to employment and is of a nature that prevents the  
39 individual from currently engaging in normal competitive employment.

40 (9) STATE.—The term “State” includes the District of Columbia, Puerto Rico, the

1 Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

2 **8502. Committee for Purchase From People Who Are Blind**  
3 **or Severely Disabled**

4 (a) ESTABLISHMENT.—There is a Committee for Purchase From People Who Are Blind  
5 or Severely Disabled.

6 (b) COMPOSITION.—The Committee consists of 15 members appointed by the  
7 President as follows:

8 (1) One officer or employee from each of the following, nominated by the head of  
9 the department or agency:

10 (A) The Department of Agriculture.

11 (B) The Department of Defense.

12 (C) The Department of the Army.

13 (D) The Department of the Navy.

14 (E) The Department of the Air Force.

15 (F) The Department of Education.

16 (G) The Department of Commerce.

17 (H) The Department of Veterans Affairs.

18 (I) The Department of Justice.

19 (J) The Department of Labor.

20 (K) The General Services Administration.

21 (2) One member from individuals who are not officers or employees of the  
22 Federal Government and who are conversant with the problems incident to the  
23 employment of the blind.

24 (3) One member from individuals who are not officers or employees of the  
25 Federal Government and who are conversant with the problems incident to the  
26 employment of other severely disabled individuals.

27 (4) One member from individuals who are not officers or employees of the  
28 Federal Government and who represent blind individuals employed in qualified  
29 nonprofit agencies for the blind.

30 (5) One member from individuals who are not officers or employees of the  
31 Federal Government and who represent severely disabled individuals (other than  
32 blind individuals) employed in qualified nonprofit agencies for other severely  
33 disabled individuals.

34 (c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3), (4), or (5) of  
35 subsection (b) shall be appointed for terms of 5 years and may be reappointed if the  
36 member meets the qualifications prescribed by those paragraphs.

1 (d) CHAIRMAN.—The members of the Committee shall elect one of the members to be  
2 Chairman.

3 (e) VACANCY.—

4 (1) MANNER IN WHICH FILLED.—A vacancy in the membership of the Committee  
5 shall be filled in the manner in which the original appointment was made.

6 (2) UNFULFILLED TERM.—A member appointed under paragraph (2), (3), (4), or  
7 (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for  
8 which the predecessor was appointed shall be appointed only for the remainder of  
9 the term. The member may serve after the expiration of a term until a successor  
10 takes office.

11 (f) PAY AND TRAVEL EXPENSES.—

12 (1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as provided in  
13 paragraph (2), members of the Committee are entitled to receive the daily equivalent  
14 of the maximum annual rate of basic pay payable under section 5376 of title 5 for  
15 each day (including travel-time) during which they perform services for the  
16 Committee. A member is entitled to travel expenses, including a per diem allowance  
17 instead of subsistence, as provided under section 5703 of title 5.

18 (2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members who are  
19 officers or employees of the Federal Government may not receive additional pay  
20 because of their service on the Committee.

21 (g) STAFF.—

22 (1) APPOINTMENT AND COMPENSATION.—Subject to rules the Committee may  
23 adopt and to chapters 33 and 51 and subchapter III of chapter 53 of title 5, the  
24 Chairman may appoint and fix the pay of personnel the Committee determines are  
25 necessary to assist it in carrying out this chapter.

26 (2) PERSONNEL FROM OTHER ENTITIES.—On request of the Committee, the head of  
27 an entity of the Federal Government may detail, on a reimbursable basis, any  
28 personnel of the entity to the Committee to assist it in carrying out this chapter.

29 (h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure directly from an  
30 entity of the Federal Government information necessary to enable it to carry out this  
31 chapter. On request of the Chairman, the head of the entity shall furnish the information  
32 to the Committee.

33 (i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall  
34 provide to the Committee, on a reimbursable basis, administrative support services the  
35 Committee requests.

36 (j) ANNUAL REPORT.—Not later than December 31 of each year, the Committee shall  
37 transmit to the President a report that includes the names of the Committee members  
38 serving in the prior fiscal year, the dates of Committee meetings in that year, a  
39 description of the activities of the Committee under this chapter in that year, and any  
40 recommendations for changes in this chapter which the Committee determines are  
41 necessary.

## 8503. Duties and powers of the Committee

### (a) PROCUREMENT LIST.—

(1) MAINTENANCE OF LIST.—The Committee shall maintain and publish in the Federal Register a procurement list. The list shall include the following products and services determined by the Committee to be suitable for the Federal Government to procure pursuant to this chapter:

(A) Products produced by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled.

(B) The services those agencies provide.

(2) CHANGES TO LIST.—The Committee may, by rule made in accordance with the requirements of section 553(b) to (e) of title 5, add to and remove from the procurement list products so produced and services so provided.

(b) FAIR MARKET PRICE.—The Committee shall determine the fair market price of products and services contained on the procurement list that are offered for sale to the Federal Government by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled. The Committee from time to time shall revise its price determinations with respect to those products and services in accordance with changing market conditions.

(c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for products and services on the procurement list among qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled.

### (d) REGULATIONS.—The Committee—

(1) may prescribe regulations regarding specifications for products and services on the procurement list, the time of their delivery, and other matters as necessary to carry out this chapter; and

(2) shall prescribe regulations providing that when the Federal Government purchases products produced and offered for sale by qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled, priority shall be given to products produced and offered for sale by qualified nonprofit agencies for the blind.

(e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall make a continuing study and evaluation of its activities under this chapter to ensure effective and efficient administration of this chapter. The Committee on its own or in cooperation with other public or nonprofit private agencies may study—

(1) problems related to the employment of the blind and other severely disabled individuals; and

(2) the development and adaptation of production methods that would enable a greater utilization of the blind and other severely disabled individuals.

1 8504. Procurement requirements for the Federal  
2 Government

3 (a) IN GENERAL.—An entity of the Federal Government intending to procure a product  
4 or service on the procurement list referred to in section 8503 of this title shall procure the  
5 product or service from a qualified nonprofit agency for the blind or a qualified nonprofit  
6 agency for other severely disabled in accordance with regulations of the Committee and  
7 at the price the Committee establishes if the product or service is available within the  
8 period required by the entity.

9 (b) EXCEPTION.—This section does not apply to the procurement of a product that is  
10 available from an industry established under chapter 307 of title 18 and that is required  
11 under section 4124 of title 18 to be procured from that industry.

12 8505. Audit

13 For the purpose of audit and examination, the Comptroller General shall have access to  
14 the books, documents, papers, and other records of—

15 (1) the Committee and of each central nonprofit agency the Committee designates  
16 under section 8503(c) of this title; and

17 (2) qualified nonprofit agencies for the blind and qualified nonprofit agencies for  
18 other severely disabled that have sold products or services under this chapter to the  
19 extent those books, documents, papers, and other records relate to the activities of  
20 the agency in a fiscal year in which a sale was made under this chapter.

21 8506. Authorization of appropriations

22 Necessary amounts may be appropriated to the Committee to carry out this chapter.

23 CHAPTER 87—KICKBACKS

24 Sec.

25 8701. Definitions.

26 8702. Prohibited conduct.

27 8703. Contractor responsibilities.

28 8704. Inspection authority.

29 8705. Administrative offsets.

30 8706. Civil actions.

31 8707. Criminal penalties.

32 8701. Definitions

33 In this chapter:

34 (1) CONTRACTING AGENCY.—The term “contracting agency”, when used with  
35 respect to a prime contractor, means a department, agency, or establishment of the

1 Federal Government that enters into a prime contract with a prime contractor.

2 (2) KICKBACK.—The term “kickback” means any money, fee, commission, credit,  
3 gift, gratuity, thing of value, or compensation of any kind that is provided to a prime  
4 contractor, prime contractor employee, subcontractor, or subcontractor employee to  
5 improperly obtain or reward favorable treatment in connection with a prime contract  
6 or a subcontract relating to a prime contract.

7 (3) PRIME CONTRACT.—The term “prime contract” means a contract or contractual  
8 action entered into by the Federal Government to obtain supplies, materials,  
9 equipment, or services of any kind.

10 (4) PRIME CONTRACTOR.—The term “prime contractor” means a person that has  
11 entered into a prime contract with the Federal Government.

12 (5) PRIME CONTRACTOR EMPLOYEE.—The term “prime contractor employee”  
13 means an officer, partner, employee, or agent of a prime contractor.

14 (6) SUBCONTRACT.—The term “subcontract” means a contract or contractual  
15 action entered into by a prime contractor or subcontractor to obtain supplies,  
16 materials, equipment, or services of any kind under a prime contract.

17 (7) SUBCONTRACTOR.—The term “subcontractor”—

18 (A) means a person, other than the prime contractor, that offers to furnish or  
19 furnishes supplies, materials, equipment, or services of any kind under a prime  
20 contract or a subcontract entered into in connection with the prime contract;  
21 and

22 (B) includes a person that offers to furnish or furnishes general supplies to  
23 the prime contractor or a higher tier subcontractor.

24 (8) SUBCONTRACTOR EMPLOYEE.—The term “subcontractor employee” means an  
25 officer, partner, employee, or agent of a subcontractor.

## 26 8702.Prohibited conduct

27 A person may not—

28 (1) provide, attempt to provide, or offer to provide a kickback;

29 (2) solicit, accept, or attempt to accept a kickback; or

30 (3) include the amount of a kickback prohibited by paragraph (1) or (2) in the  
31 contract price—

32 (A) a subcontractor charges a prime contractor or a higher tier subcontractor;  
33 or

34 (B) a prime contractor charges the Federal Government.

## 35 8703.Contractor responsibilities

36 (a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include  
37 in each prime contract awarded by the agency a requirement that the prime contractor  
38 shall—

1 (1) have in place and follow reasonable procedures designed to prevent and detect  
2 violations of section 8702 of this title in its own operations and direct business  
3 relationships; and

4 (2) cooperate fully with a Federal Government agency investigating a violation of  
5 section 8702 of this title.

6 (b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime  
7 contractor shall cooperate fully with a Federal Government agency investigating a  
8 violation of section 8702 of this title.

9 (c) REPORTING REQUIREMENT.—

10 (1) IN GENERAL.—A prime contractor or subcontractor that has reasonable  
11 grounds to believe that a violation of section 8702 of this title may have occurred  
12 shall promptly report the possible violation in writing to the inspector general of the  
13 contracting agency, the head of the contracting agency if the agency does not have  
14 an inspector general, or the Attorney General.

15 (2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or  
16 contractual action to suspend or debar a person who is eligible to enter into contracts  
17 with the Federal Government, evidence that the person has supplied information to  
18 the Federal Government pursuant to paragraph (1) is favorable evidence of the  
19 person's responsibility for the purposes of Federal procurement laws and  
20 regulations.

21 (d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply  
22 to a prime contract—

23 (1) that is not greater than \$100,000; or

24 (2) for the acquisition of commercial items (as defined in section 103 of this title).

## 25 8704. Inspection authority

26 (a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of  
27 this title with respect to a prime contract, the Comptroller General and the inspector  
28 general of the contracting agency, or a representative of the contracting agency  
29 designated by the head of the agency if the agency does not have an inspector general,  
30 shall have access to and may inspect the facilities and audit the books and records,  
31 including electronic data or records, of a prime contractor or subcontractor under a prime  
32 contract awarded by the agency.

33 (b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of  
34 commercial items (as defined in section 103 of this title).

## 35 8705. Administrative offsets

36 (a) DEFINITION.—In this section, the term “contracting officer” has the meaning given  
37 that term in chapter 69 of this title.

38 (b) OFFSET AUTHORITY.—A contracting officer of a contracting agency may offset the  
39 amount of a kickback provided, accepted, or charged in violation of section 8702 of this

1 title against amounts the Federal Government owes the prime contractor under the prime  
2 contract to which the kickback relates.

3 (c) DUTIES OF PRIME CONTRACTOR.—

4 (1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On direction of a  
5 contracting officer of a contracting agency with respect to a prime contract, the  
6 prime contractor shall withhold from amounts owed to a subcontractor under a  
7 subcontract of the prime contract the amount of a kickback which was or may be  
8 offset against the prime contractor under subsection (b). The contracting officer may  
9 order that amounts withheld—

10 (A) be paid over to the contracting agency; or

11 (B) be retained by the prime contractor if the Federal Government has  
12 already offset the amount against the prime contractor.

13 (2) NOTICE.—The prime contractor shall notify the contracting officer when an  
14 amount is withheld and retained under paragraph (1)(B).

15 (d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.—An offset  
16 under subsection (b) or a direction or order of a contracting officer under subsection (c) is  
17 a claim by the Federal Government for the purposes of chapter 69 of this title.

18 **8706.Civil actions**

19 (a) AMOUNT.—The Federal Government in a civil action may recover from a person—

20 (1) that knowingly engages in conduct prohibited by section 8702 of this title a  
21 civil penalty equal to—

22 (A) twice the amount of each kickback involved in the violation; and

23 (B) not more than \$10,000 for each occurrence of prohibited conduct; and

24 (2) whose employee, subcontractor, or subcontractor employee violates section  
25 8702 of this title by providing, accepting, or charging a kickback a civil penalty  
26 equal to the amount of that kickback.

27 (b) STATUTE OF LIMITATIONS.—A civil action under this section must be brought  
28 within 6 years after the later of the date on which—

29 (1) the prohibited conduct establishing the cause of action occurred; or

30 (2) the Federal Government first knew or should reasonably have known that the  
31 prohibited conduct had occurred.

32 **8707.Criminal penalties**

33 A person that knowingly and willfully engages in conduct prohibited by section 8702  
34 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

35 **SEC. 4. CONFORMING AMENDMENT.**

36 Section 2410i(b)(1) of title 10, United States Code, is amended by striking “small  
37 purchase threshold” and substituting “simplified acquisition threshold”.

1 **SEC. 5. CONFORMING CROSS-REFERENCES.**

2 (a) TITLE 5.—Title 5, United States Code, is amended as follows:

3 (1) In section 504(b)(1)(C)(ii)—

4 (A) strike “section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)”  
5 and substitute “section 6903 of title 41”; and

6 (B) strike “section 8 of that Act (41 U.S.C. 607)” and substitute “section  
7 6905 of title 41”.

8 (2) In section 551(1)(H), strike “chapter 2 of title 41;”.

9 (3) In section 595(c)(10), strike “title III of the Federal Property and  
10 Administrative Services Act of 1949, as amended (41 U.S.C. 251–260)” and  
11 substitute “~~part~~**division** C of subtitle I of title 41”.

12 (4) In section 701(b)(1)(H), strike “chapter 2 of title 41;”.

13 (5) In section 3109(b)(3), strike “section 5” and substitute “section 6101(b) to  
14 (d)”.

15 (6) In section 3374(c)(2), strike “section 27 of the Office of Federal Procurement  
16 Policy Act” and substitute “chapter 21 of title 41”.

17 (7) In section 3704(b)(2)(G), strike “section 27 of the Office of Federal  
18 Procurement Policy Act” and substitute “chapter 21 of title 41”.

19 (8) In section 4105, strike “section 5” and substitute “section 6101(b) to (d)”.

20 (9) In section 5102(c)(30), strike “section 8 of the Contract Disputes Act of 1978”  
21 and substitute “section 6905**(a)(2), (c)(2), or (d)(2)** of title 41”.

22 (10) In section 5372a—

23 (A) in subsection ~~(a)(1)~~**(a)(1)**—

24 **(i)** strike “section 8 of the Contract Disputes Act of 1978” and substitute  
25 “section 6905**(a)(2), (c)(2), or (d)(2)** of title 41”; and

26 **(ii)** strike “**section 42 of the Office of Federal Procurement Policy**  
27 **Act**” and substitute “**section 6905(b)(2)** of title 41”; and

28 (B) in subsection (a)(2), strike “section 8 of the Contract Disputes Act of  
29 1978” and substitute “section 6905**(a)(1), (c)(1), or (d)(1)** of title 41”.

30 (11) In section 7342(e)(1), strike “title III of the Federal Property and  
31 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
32 “~~part~~**division** C of subtitle I of title 41”.

33 (12) In section 8709(a), strike “section 5” and substitute “section 6101(b) to (d)”.

34 (13) In section 8714a(a), strike “section 5” and substitute “section 6101(b) to (d)”.

35 (14) In section 8714b(a), strike “section 5” and substitute “section 6101(b) to (d)”.

36 (15) In section 8714c(a), strike “section 5” and substitute “section 6101(b) to (d)”.

1 (16) In section 8902(a), strike “section 5” and substitute “section 6101(b) to (d)”.

2 (17) In section 8953(a)(1), strike “section 5” and substitute “section 6101(b) to  
3 (d)”.

4 (18) In section 8983(a)(1), strike “section 5” and substitute “section 6101(b) to  
5 (d)”.

6 (19) In section 9003—

7 (A) in subsection (a), strike “section 5” and substitute “section 6101(b) to  
8 (d)”;

9 (B) in subsection (c)(3), before subparagraph (A), strike “the Contract  
10 Disputes Act of 1978” and substitute “chapter 69 of title 41”;

11 (C) in subsection (c)(3)(A), strike “~~section 8(c) of such Act~~ and substitute  
12 “~~section 6905(e) of title 41~~”; **“(after appropriate arrangements, as described**  
13 **in section 8(c) of such Act”**; and

14 (D) in subsection (c)(3)(B), strike “section 10(a)(1) of such Act” and  
15 substitute “section 6904(b)(1) of title 41”.

16 (20) In section 9009, strike “section 26(f) of the Office of Federal Procurement  
17 Policy Act (41 U.S.C. 422(f))” and substitute “section 1502(a) and (b) of title 41”.

18 (b) TITLE 10.—Title 10, United States Code, is amended as follows:

19 (1) In section 133(c)(1), strike “section ~~16(3)~~ **16(c)** of the Office of Federal  
20 Procurement Policy Act (41 U.S.C. ~~414(3)~~)” **414(c)**” and substitute “section  
21 1702(c) of title 41”.

22 (2) In section 2013(a), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)”  
23 and substitute “section 6101(b)–(d) of title 41”.

24 (3) In section 2194(b)(2), strike “title III of the Federal Property and  
25 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
26 “~~part~~ **“division** C of subtitle I of title 41”.

27 (4) In section 2201—

28 (A) in subsection (b), strike “section 3732(a) of the Revised Statutes (41  
29 U.S.C. 11(a))” and substitute “section 6301(a) and (b)(1)–(3) of title 41”; and

30 (B) in subsection (c), strike “section 3732(a) of the Revised Statutes (41  
31 U.S.C. 11(a))” and substitute “section 6301(a) and (b)(1)–(3) of title 41”.

32 (5) In section 2207(b), strike “section 4(11) of the Office of Federal Procurement  
33 Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title 41”.

34 (6) In section 2225(f)—

35 (A) in paragraph (1), strike “section ~~16(3)~~ **16(c)** of the Office of Federal  
36 Procurement Policy Act (41 U.S.C. ~~414(3)~~)” **414(c)**” and substitute “section  
37 1702(c) of title 41”; and

38 (B) in paragraph (2), strike “section 4(11) of the Office of Federal

1 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of  
2 title 41”.

3 (7) In section 2226(b), strike “section 4(12) of the Office of Federal Procurement  
4 Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

5 (8) In section 2302—

6 (A) in paragraph (3), strike “section 4 of the Office of Federal Procurement  
7 Policy Act (41 U.S.C. 403)” and substitute “chapter 1 of title 41”;

8 (B) in paragraph (6), strike “section 25(c)(1) of the Office of Federal  
9 Procurement Policy Act (41 U.S.C. 421(c)(1))” and substitute “section  
10 1303(a)(1) of title 41”; and

11 (C) in paragraph (7), strike “section 4 of the Office of Federal Procurement  
12 Policy Act (41 U.S.C. 403)” and substitute “section 133 of title 41”.

13 (9) In section 2302a—

14 (A) in subsection (a), strike “section 4(11) of the Office of Federal  
15 Procurement Policy Act” and substitute “section 134 of title 41”; and

16 (B) in subsection (b), strike “section 33 of the Office of Federal Procurement  
17 Policy Act” and substitute “section 1905 of title 41”.

18 (10) In section 2302b, strike “section 31 of the Office of Federal Procurement  
19 Policy Act” and substitute “section 1901 of title 41”.

20 (11) In section 2302c—

21 (A) in subsection (a)(1), strike “section 30 of the Office of Federal  
22 Procurement Policy Act (41 U.S.C. 426)” and substitute “section 2301 of title  
23 41”; and

24 (B) in subsection (b), strike “section ~~16(3)~~ **16(c)** of the Office of Federal  
25 Procurement Policy Act (41 U.S.C. ~~414(3)~~)” **414(c)**” and substitute “section  
26 1702(c) of title 41”.

27 (12) In section 2304—

28 (A) in subsection (f)(1)(B)(iii), strike “section ~~16(3)~~ **16(c)** of the Office of  
29 Federal Procurement Policy Act (41 U.S.C. ~~414(3)~~)” **414(c)**” and substitute  
30 “section 1702(c) of title 41”;

31 (B) in subsection (f)(1)(C), strike “section 18 of the Office of Federal  
32 Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1707 of title  
33 41”;

34 (C) in subsection (f)(2)(D), strike “the Javits-Wagner-O’Day Act (41 U.S.C.  
35 46 et seq.)” and substitute “chapter 85 of title 41”;

36 (D) in subsection (g)(4), strike “section 31(f) of the Office of Federal  
37 Procurement Policy Act (41 U.S.C. 427)” and substitute “section 1901(f) of  
38 title 41”; and

39 (E) in subsection (h)(1), strike “The Walsh-Healey Act (41 U.S.C. 35 et

1 seq.)” and substitute “Chapter 65 of title 41”.

2 (13) In section 2304b—

3 (A) in subsection (c), strike “section 18 of the Office of Federal Procurement  
4 Policy Act (41 U.S.C. 416)” and substitute “section 1707 of title 41”; and

5 (B) in subsection (f)(3), strike “section 18 of the Office of Federal  
6 Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1707 of title  
7 41”.

8 (14) In section 2304c(a)(1), strike “section 18 of the Office of Federal  
9 Procurement Policy Act (41 U.S.C. 416)” and substitute “section 1707 of title 41”.

10 (15) In section 2306a(h)(3), strike “section 4(12) of the Office of Federal  
11 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title  
12 41”.

13 (16) In section 2314, strike “Sections 3709 and 3735 of the Revised Statutes (41  
14 U.S.C. 5 and 13)” and substitute “Sections 6101(b)–(d) and 6304 of title 41”.

15 (17) In section 2318—

16 (A) in subsection (a)(1), strike “section 20(a) of the Office of Federal  
17 Procurement Policy Act (41 U.S.C. 418(a))” and substitute “section 1704(a) of  
18 title 41”; and

19 (B) in subsection (a)(2), strike “sections 20(b) and 20(c) of the Office of  
20 Federal Procurement Policy Act (41 U.S.C. 418(b), (c))” and substitute “section  
21 1704(b) and (c) of title 41”.

22 (18) In section 2321(h), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601  
23 et seq.)” and substitute “chapter 69 of title 41”.

24 (19) In section 2324—

25 (A) in subsection (d)(1), strike “section 6 of the Contract Disputes Act of  
26 1978 (41 U.S.C. 605)” and substitute “section 6903 of title 41”;

27 (B) in subsection (d)(2), strike “section 7 of such Act (41 U.S.C. 606)” and  
28 substitute “section 6904(a) of title 41”;

29 (C) in subsection (e)(1)(P), strike “section 39 of the Office of Federal  
30 Procurement Policy Act (41 U.S.C. 435)” and substitute “section 1127 of title  
31 41”; and

32 (D) in subsection (e)(2)(C), strike “(41 U.S.C. 10b–1)” and substitute “(as  
33 added by section 7002(2) of the Omnibus Trade and Competitiveness Act of  
34 1988)”.

35 (20) In section 2343, strike “section 3741 of the Revised Statutes (41 U.S.C. 22)”  
36 and substitute “section 6306 of title 41”.

37 (21) In section 2375(b), strike “section 34 of the Office of Federal Procurement  
38 Policy Act (41 U.S.C. 430)” and substitute “section 1906 of title 41”.

39 (22) In section 2376(1), strike “section 4 of the Office of Federal Procurement

1 Policy Act (41 U.S.C. 403)” and substitute “chapter 1 of title 41”.

2 (23) In section 2384—

3 (A) in subsection (b)(2), strike “section 4(12) of the Office of Federal  
4 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of  
5 title 41””; and

6 (B) in subsection (b)(3), strike “section 4(11) of the Office of Federal  
7 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of  
8 title 41””.

9 (24) In section 2393(d)—

10 (A) strike “section 4(11) of the Office of Federal Procurement Policy Act (41  
11 U.S.C. 403(11))” and substitute “section 134 of title 41””; and

12 (B) strike “section 4(12) of the Office of Federal Procurement Policy Act (41  
13 U.S.C. 403(12))” and substitute “section 103 of title 41””.

14 (25) In section 2402—

15 (A) in subsection (c), strike “section 4(11) of the Office of Federal  
16 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of  
17 title 41””; and

18 (B) in subsection (d)(2), strike “section 4(12) of the Office of Federal  
19 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of  
20 title 41””.

21 (26) In section 2408—

22 (A) in subsection (a)(4)(A), strike “section 4(11) of the Office of Federal  
23 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of  
24 title 41””; and

25 (B) in subsection (a)(4)(B), strike “section 4(12) of the Office of Federal  
26 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of  
27 title 41””.

28 (27) In section 2410(c), strike “section 4(11) of the Office of Federal Procurement  
29 Policy Act” and substitute “section 134 of title 41””.

30 (28) In section 2410b(c), strike “section 4(12) of the Office of Federal  
31 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title  
32 41””.

33 (29) In section 2410d—

34 (A) in subsection (b)(2)(A), strike “section 5(3) of the Javits-Wagner-O’Day  
35 Act (41 U.S.C. 48b(3))” and substitute “section 8501(8) of title 41””; and

36 (B) in subsection (b)(2)(B), strike “handicapped, as defined in section 5(4) of  
37 such Act (41 U.S.C. 48b(4))” and substitute “disabled, as defined in section  
38 8501(7) of title 41””; and

39 (C) in subsection (b)(2)(C), strike “section 2(c) of such Act (41 U.S.C.

1           47(c))” and substitute “section 8503(c) of title 41”.

2           (30) In section 2410g(d)(1), strike “section 4(12) of the Office of Federal  
3 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title  
4 41”.

5           (31) In section 2410i(b)(1), strike “section 4(11) of the Office of Federal  
6 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title  
7 41”.

8           (32) In section 2410m—

9           (A) in subsection (a), before paragraph (1), strike “the Contract Disputes Act  
10 of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”;

11           (B) in subsection (a)(2), strike “section 7 of such Act (41 U.S.C. 606)” and  
12 substitute “section 6904(a) of title 41”; and

13           (C) in subsection (b)(1)(A), strike “section 10(a) of the Contract Disputes  
14 Act of 1978 (41 U.S.C. 609(a))” and substitute “section 6904(b) of title 41”.

15           (33) In section 2457(e), strike “section 2 of the Buy American Act (41 U.S.C.  
16 10a)” and substitute “section 8302 of title 41”.

17           (34) In section 2461(e)(1), strike “section 2 of the Javits-Wagner-O’Day Act (41  
18 U.S.C. 47)” and substitute “section 8503 of title 41”.

19           (35) In section 2482(b)(1), strike “section 4(6) of the Office of Federal  
20 Procurement Policy Act (41 U.S.C. 403(6))” and substitute “section 107 of title 41”.

21           (36) In the chapter analysis for subchapter V of chapter 148, in the item for  
22 section 2533, strike “the Buy American Act” and substitute “chapter 83 of title 41”.

23           (37) In section 2533—

24           (A) in the section catchline, strike “the Buy American Act” and substitute  
25 “chapter 83 of title 41”; and

26           (B) in subsection (a), strike “section 2 of the Buy American Act (41 U.S.C.  
27 10a)” and substitute “section 8302 of title 41”.

28           (38) In section 2533a(i), strike “section 34 of the Office of Federal Procurement  
29 Policy Act (41 U.S.C. 430)” and substitute “section 1906 of title 41”.

30           (39) **In section 2533b—**

31           **(A) in subsection (h), strike “section 34 of the Office of Federal**  
32 **Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906 of**  
33 **title 41”; and**

34           **(B) in subsection (j), strike “section 4 of the Office of Federal**  
35 **Procurement Policy Act (41 U.S.C. 403)” and substitute “section 105 of**  
36 **title 41”.**

37           **(40)** In section 2534(g)(2), strike “section 33 of the Office of Federal Procurement  
38 Policy Act (41 U.S.C. 429)” and substitute “section 1905 of title 41”.

1           ~~(40)~~**(41)** In section 2562(a)(1), strike “title III of the Federal Property and  
2 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
3 ~~part~~**“division** C of subtitle I of title 41”.

4           ~~(41)~~**(42)** In section 2576(a), strike “title III of the Federal Property and  
5 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
6 ~~part~~**“division** C of subtitle I of title 41”.

7           ~~(42)~~**(43)** In section 2636(b)(3), strike “section 4(11) of the Office of Federal  
8 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of title  
9 41”.

10           ~~(43)~~**(44)** In section 2667(f)(1), strike “Notwithstanding subsection (a)(3) or  
11 subtitle I of title 40 and title III of the Federal Property and Administrative Services  
12 Act of 1949 (to the extent subtitle I and title III are inconsistent with this  
13 subsection)” and substitute “Notwithstanding subtitle I of title 40 and ~~part~~ **division**  
14 C of subtitle I of title 41 (to the extent those provisions are inconsistent with this  
15 subsection) or subsection (a)(2) of this section”.

16           ~~(44)~~**(45)** In section 2676(a), strike “title III of the Federal Property and  
17 Administrative Services Act of 1949, as amended (41 U.S.C. 251 et seq.)” and  
18 substitute ~~part~~**“division** C of subtitle I of title 41”.

19           ~~(45)~~**(46)** In section 2691(b), strike “title III of the Federal Property and  
20 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
21 ~~part~~**“division** C of subtitle I of title 41”.

22           ~~(46)~~**(47)** In section 2696(a), strike “title III of the Federal Property and  
23 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
24 ~~part~~**“division** C of subtitle I of title 41”.

25           ~~(47)~~ In section 2701(i)(1), in the heading, strike “Miller Act” and substitute  
26 “sections 3131 and 3133 of title 40”.

27           (48) In section 2836(g), strike “the Contract Disputes Act of 1978 (41 U.S.C. 601  
28 et seq.)” and substitute “chapter 69 of title 41”.

29           (49) In section 2854a(d)(1), strike “title III of the Federal Property and  
30 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
31 ~~part~~**“division** C of subtitle I of title 41”.

32           (50) In section 2878(d)(2), strike “title III of the Federal Property and  
33 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
34 ~~part~~**“division** C of subtitle I of title 41”.

35           (51) In the chapter analysis for chapter 633, in the item for section 7299, strike  
36 “Walsh-Healey Act” and substitute “chapter 65 of title 41”.

37           (52) In section 7299—

38                   (A) in the heading, strike “Walsh-Healey Act” and substitute “chapter 65 of  
39 title 41”; and

40                   (B) strike “the Walsh-Healey Act (41 U.S.C. 35 et seq.)” and substitute

1 “chapter 65 of title 41”.

2 (53) In section 7305(d)—

3 (A) strike “title III of the Federal Property and Administrative Services Act  
4 of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~ **division** C of subtitle I of  
5 title 41”; and

6 (B) strike “under subtitle I of title 40 and such title III” and substitute “under  
7 those provisions”.

8 (54) In section 9444(b)(1), strike “title III of the Federal Property and  
9 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
10 ~~part~~ **division** C of subtitle I of title 41”.

11 (55) In section 9781(g), strike “title III of the Federal Property and Administrative  
12 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~ **division** C of  
13 subtitle I of title 41”.

14 (c) TITLE 14.—Title 14, United States Code, is amended as follows:

15 (1) In section 92(d), strike “title III of the Federal Property and Administrative  
16 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~ **division** C of  
17 subtitle I of title 41”.

18 (2) In section 93(h), strike “title III of the Federal Property and Administrative  
19 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~ **division** C of  
20 subtitle I of title 41”.

21 (3) In section 641(a), strike “title III of the Federal Property and Administrative  
22 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~ **division** C of  
23 subtitle I of title 41”.

24 (4) In section 685(c)(1), strike “title III of the Federal Property and  
25 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
26 ~~part~~ **division** C of subtitle I of title 41”.

27 (d) TITLE 18.—Title 18, United States Code, is amended as follows:

28 (1) In section 3672, strike “section 3709 of the Revised Statutes of the United  
29 States” and substitute “section 6101(b) to (d) of title 41”.

30 (2) In section 4124(c), strike “section 6(d)(4) of the Office of Federal  
31 Procurement Policy Act” and substitute “section 1122(a)(4) of title 41”.

32 (e) TITLE 23.—Title 23, United States Code, is amended as follows:

33 (1) ~~In section 107(a), strike “the Act of February 26, 1931, 46 Stat. 1421” and  
34 substitute “sections 3114 to 3116 and 3118 of title 40”.~~

35 (2) In section 140—

36 (A) in subsection (b), strike “section 3709 of the Revised Statutes, as  
37 amended (41 U.S.C. 5),” and substitute “section 6101(b) to (d) of title 41”; and

38 (B) in subsection (c)—

1 (i) strike “section 3709 of the Revised Statutes, as amended (41 U.S.C.  
2 5),” and substitute “section 6101(b) to (d) of title 41”; and

3 (ii) strike “section 302(e) of the Federal Property and Administrative  
4 Services Act of 1949 (41 U.S.C. 252(e))” and substitute “section 3106 of  
5 title 41”.

6 ~~(3) In section 210(e), strike “the Act of February 26, 1931; 46 Stat. 1421” and  
7 substitute “sections 3114 to 3116 and 3118 of title 40”.~~

8 ~~(4)(2)~~ In section 502(b)(5), strike “Section 3709 of the Revised Statutes (41  
9 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

10 (f) THE INTERNAL REVENUE CODE OF 1986.—Section 7608(c)(1) of the Internal  
11 Revenue Code of 1986 (26 U.S.C. 7608(c)(1)) is amended—

12 (1) in subparagraph (A)(i)(II), by striking “sections 11(a) and 22” and substituting  
13 “sections 6301(a) and (b)(1)–(3) and 6306”;

14 (2) in subparagraph (A)(i)(III), by striking “section 255” and substituting “chapter  
15 45”; and

16 (3) in subparagraph (A)(i)(V), by striking “section 254(a) and (c)” and  
17 substituting “section 3901”.

18 (g) TITLE 28.—Title 28, United States Code, is amended as follows:

19 (1) In the last sentence of section 524(c)(1), strike “section 3709 of the Revised  
20 Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and  
21 Administrative Services Act of 1949 (41 U.S.C. 251 and following)” and substitute  
22 ~~“part~~“**division** C of subtitle I of title 41, section 6101(b) to (d) of title 41”.

23 (2) In section 604(a)(10)(C), strike “section 3709 of the Revised Statutes of the  
24 United States (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

25 (3) In section 624(3), strike “section 3709 of the Revised Statutes, as amended (41  
26 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

27 (4) In section 753(g), strike “section 3709 of the Revised Statutes of the United  
28 States, as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

29 (5) In section 1295—

30 (A) in subsection (a)(10), strike “section 8(g)(1) of the Contract Disputes Act  
31 of 1978 (41 U.S.C. 607(g)(1))” and substitute “section 6907(a)(1) of title 41”;

32 (B) in subsection (b), strike “section 10(b) of the Contract Disputes Act of  
33 1978 (41 U.S.C. 609(b))” and substitute “section 6907(b) of title 41”; and

34 (C) in subsection (c), strike “section 10(b) of the Contract Disputes Act of  
35 1978” and substitute “section 6907(b) of title 41”.

36 (6) In section 1346(a)(2), strike “sections 8(g)(1) and 10(a)(1) of the Contract  
37 Disputes Act of 1978” and substitute “sections 6904(b)(1) and 6907(a)(1) of title  
38 41”.

39 ~~(7) In the chapter analysis for chapter 91, in item 1499, strike “Contract Work~~

1 ~~Hours and Safety Standards Act” and substitute “chapter 37 of title 40”.~~

2 (8) In section 1491(a)(2), strike “section 10(a)(1) of the Contract Disputes Act of  
3 1978” and substitute “section 6904(b)(1) of title 41”.

4 ~~(9) In section 1499, in the section catchline, strike “Contract Work Hours and  
5 Safety Standards Act” and substitute “chapter 37 of title 40”.~~

6 ~~(10)~~(8) In section 2401(a), strike “the Contract Disputes Act of 1978” and  
7 substitute “chapter 69 of title 41”.

8 ~~(11)~~(9) In section 2412—

9 (A) in subsection (d)(2)(E), strike “the Contract Disputes Act of 1978” and  
10 substitute “chapter 69 of title 41”; and

11 (B) in subsection (d)(3), strike “the Contract Disputes Act of 1978” and  
12 substitute “chapter 69 of title 41”.

13 ~~(12)~~(10) In section 2414, strike “the Contract Disputes Act of 1978” and  
14 substitute “chapter 69 of title 41”.

15 ~~(13)~~(11) In section 2517(a), strike “the Contract Disputes Act of 1978” and  
16 substitute “chapter 69 of title 41”.

17 (h) TITLE 31.—Title 31, United States Code, is amended as follows:

18 (1) In section 506, strike “section 5(a) of the Office of Federal Procurement  
19 Policy Act (41 U.S.C. 404(a))” and substitute “section 1101(a) of title 41”.

20 (2) In section 731(i)(7), strike “section 27 of the Office of Federal Procurement  
21 Policy Act (41 U.S.C. 423)” and substitute “chapter 21 of title 41”.

22 (3) In section 781(c)(1), strike “section 3709 of the Revised Statutes (41 U.S.C.  
23 5)” and substitute “section 6101(b) to (d) of title 41”.

24 (4) Section 1344(g)(2)(A) is amended to read as follows:

25 “(A) a department—

26 “(i) including independent establishments, other agencies, and wholly  
27 owned Government corporations; but

28 “(ii) not including the Senate, House of Representatives, or Architect of  
29 the Capitol, or the officers or employees thereof;”.

30 (5) In section 3567, strike “section 4(1) of the Office of Federal Procurement  
31 Policy Act (41 U.S.C. 403(1))” and substitute “section 133 of title 41”.

32 (6) In section 3718(b)(1)(A), strike “title III of the Federal Property and  
33 Administrative Services Act of 1949 (41 U.S.C. 251 and following)” and substitute  
34 ~~part~~“**division** C of subtitle I of title 41”.

35 (7) In section 3902(a), strike “section 12 of the Contract Disputes Act of 1978 (41  
36 U.S.C. 611)” and substitute “section 6909(a)(1) and (b) of title 41”.

37 (8) In section 3907—

1 (A) in subsection (a), strike “section 6 of the Contract Disputes Act of 1978  
2 (41 U.S.C. 605)” and substitute “section 6903 of title 41”;

3 (B) in subsection (b)(1)(A), strike “the Contract Disputes Act of 1978 (41  
4 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”;

5 (C) in subsection (b)(2)—

6 (i) strike “section 12 of the Contract Disputes Act of 1978 (41 U.S.C.  
7 611)” and substitute “section 6909(a)(1) and (b) of title 41”; and

8 (ii) in the second sentence, strike “section 12” and substitute “section  
9 6909(a)(1) and (b)”;

10 (D) in subsection (c), strike “the Contract Disputes Act of 1978 (41 U.S.C.  
11 601 et seq.)” and substitute “chapter 69 of title 41”.

12 (9) In section 6202(c)(2), strike “section 6(d)(5) of the Office of Federal  
13 Procurement Policy Act (41 U.S.C. 405(d)(5))” and substitute “section 1122(a)(5) of  
14 title 41”.

15 (10) In section 9703(b)(3), as added by section 638(b)(1) of the Act of October 6,  
16 1992 (Public Law 102–393, 106 Stat. 1779), strike “section 3709 of the Revised  
17 Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and  
18 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
19 ~~part~~“**division** C of subtitle I of title 41, section 6101(b) to (d) of title 41”.

20 (i) TITLE 35.—Title 35, United States Code, is amended as follows:

21 (1) In section 2(b)(4)(A), strike “title III of the Federal Property and  
22 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
23 ~~part~~“**division** C of subtitle I of title 41”.

24 (2) In section 203(b), strike “the Contract Disputes Act (41 U.S.C. 601 et seq.)”  
25 and substitute “chapter 69 of title 41”.

26 (j) TITLE 38.—Title 38, United States Code, is amended as follows:

27 (1) In section 1720(c)(2), strike “section 2(b)(1) of the Service Contract Act of  
28 1965 (41 U.S.C. 351(b)(1))” and substitute “section 6704(a) of title 41”.

29 (2) In section 1966(a), strike “section 3709 of the Revised Statutes, as amended  
30 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

31 (3) In section 3720(b), strike “title III of the Federal Property and Administrative  
32 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute ~~part~~“**division** C of  
33 subtitle I of title 41”.

34 (4) In section 7317(f), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)”  
35 and substitute “section 6101(b) to (d) of title 41”.

36 (5) In section 7802(f), strike “section 3709 of the Revised Statutes (41 U.S.C. 5)”  
37 and substitute “section 6101(b) to (d) of title 41”.

38 (6) In section 8122—

39 (A) in subsection (a)(1), strike “section 3709 of the Revised Statutes (41

1 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”; and

2 (B) in subsection (c)—

3 (i) strike “(41 U.S.C. 252(c))”; and

4 (ii) strike “section 304 of that Act (41 U.S.C. 254)” and substitute  
5 “sections 3901 and 3905 of title 41”.

6 **(7) In section 8127—**

7 **(A) in subsection (b), strike “section 4 of the Office of Federal**  
8 **Procurement Policy Act (41 U.S.C. 403)” and substitute “section 134 of**  
9 **title 41”; and**

10 **(B) in subsection (c)(2), strike “section 4 of the Office of Federal**  
11 **Procurement Policy Act (41 U.S.C. 403)” and substitute “section 134 of**  
12 **title 41”.**

13 **(8) In section 8153(a)—**

14 (A) in paragraph (3)(B)(ii), strike “section 22 of the Office of Federal  
15 Procurement Policy Act (41 U.S.C. 418b)” and substitute “section 1706 of title  
16 41”; and

17 (B) in paragraph (3)(D), strike “section 303(f) of the Federal Property and  
18 Administrative Services Act of 1949 (41 U.S.C. 253(f))” and substitute  
19 “section 3303(d) of title 41”.

20 ~~(8)(9)~~ **(9) In section 8201(e), strike “section 3709 of the Revised Statutes (41 U.S.C.**  
21 **5)” and substitute “section 6101(b) to (d) of title 41”.**

22 (k) TITLE 39.—Section 410(b) of title 39, United States Code, is amended by striking  
23 paragraph (5) and substituting—

24 “(5) chapters 65 and 67 of title 41;”.

25 (l) TITLE 40.—Title 40, United States Code, is amended as follows:

26 (1) In the chapter analysis for chapter 1, in item 111, strike “Federal Property and  
27 Administrative Services Act of 1949” and substitute “~~part~~**division** C of subtitle I of  
28 title 41”.

29 (2) In section 102, before paragraph (1), strike “title III of the Federal Property  
30 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
31 “~~part~~**division** C of subtitle I of title 41”.

32 (3) In section 111—

33 (A) in the section catchline, strike “Federal Property and Administrative  
34 Services Act of 1949” and substitute “~~part~~**division** C of subtitle I of title 41”;  
35 and

36 (B) before paragraph (1), strike “title III of the Federal Property and  
37 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
38 “~~part~~**division** C of subtitle I of title 41”.

1 (4) In section 113(b)—

2 (A) in the heading, strike “THE OFFICE OF FEDERAL PROCUREMENT POLICY  
3 ACT” and substitute “~~Part~~“**DIVISION** B OF SUBTITLE I OF TITLE 41”; and

4 (B) strike “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et  
5 seq.)” and substitute “~~part~~“**division** B of subtitle I of title 41”.

6 (5) In section 311—

7 (A) in subsection (a), strike “title III of the Federal Property and  
8 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
9 “~~part~~“**division** C of subtitle I of title 41”; and

10 (B) in subsection (b), strike “title III of the Federal Property and  
11 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
12 “~~part~~“**division** C of subtitle I of title 41”.

13 (6) In section 501(b)(2)(B), strike “the Office of Federal Procurement Policy Act  
14 (41 U.S.C. 401 et seq.)” and substitute “~~part~~“**division** B of subtitle I of title 41”.

15 (7) In section 502—

16 (A) in subsection (b)(1)(A)(i), strike “section 5(3) of the Javits-Wagner-  
17 O’Day Act (41 U.S.C. 48b(3))” and substitute “section 8501(8) of title 41”;

18 (B) in subsection (b)(1)(A)(ii), strike “handicapped (as defined in section  
19 5(4) of the Javits-Wagner-O’Day Act (41 U.S.C. 48b(4)))” and substitute  
20 “disabled (as defined in section 8501(7) of title 41)”;

21 (C) in subsection (b)(1)(B), strike “the Javits-Wagner-O’Day Act (41 U.S.C.  
22 46 et seq.)” and substitute “chapter 85 of title 41”; and

23 (D) in subsection (b)(2), strike “section 2 of the Javits-Wagner-O’Day Act  
24 (41 U.S.C. 47)” and substitute “section 8503 of title 41”.

25 (8) In section 503(b)—

26 (A) in paragraph (1), strike “the Office of Federal Procurement Policy Act  
27 (41 U.S.C. 401 et seq.)” and substitute “~~part~~“**division** B of subtitle I of title  
28 41”; and

29 (B) in paragraph (3)—

30 (i) in the heading, strike “SECTION 3709 OF REVISED STATUTES” and  
31 substitute “SECTION 6101(b) TO (d) OF TITLE 41”; and

32 (ii) strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and  
33 substitute “Section 6101(b) to (d) of title 41”.

34 (9) In section 506(a)(1)(D), strike “the Office of Federal Procurement Policy Act  
35 (41 U.S.C. 401 et seq.)” and substitute “~~part~~“**division** B of subtitle I of title 41”.

36 (10) In section 545(f), strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)”  
37 and substitute “Section 6101(b)–(d) of title 41”.

38 (11) In section 593(a)(2), strike “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et

1 seq.)” and substitute “chapter 85 of title 41”.

2 (12) In section 1305, strike “title III of the Federal Property and Administrative  
3 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~“division C of  
4 subtitle I of title 41”.

5 (13) In section 1308, strike “title III of the Federal Property and Administrative  
6 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~“division C of  
7 subtitle I of title 41”.

8 (14) In section 3148, strike “section 3709 of the Revised Statutes (41 U.S.C. 5)”  
9 and substitute “section 6101(b) to (d) of title 41”.

10 (15) In section 3304(d)(2), strike “title III of the Federal Property and  
11 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
12 “~~part~~“division C of subtitle I of title 41”.

13 (16) In section 3305(a)—

14 (A) in paragraph (1), strike “title III of the Federal Property and  
15 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
16 “~~part~~“division C of subtitle I of title 41”; and

17 (B) in paragraph (2), strike “title III of the Federal Property and  
18 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
19 “~~part~~“division C of subtitle I of title 41”.

20 (17) In section 3308(a), strike “section 3709 of the Revised Statutes (41 U.S.C.  
21 5)” and substitute “section 6101(b) to (d) of title 41”.

22 (18) In section 3310(2), strike “section 303 of the Federal Property and  
23 Administrative Services Act of 1949 (41 U.S.C. 253)” and substitute “sections 3105  
24 and 3301 to 3304 of title 41”.

25 (19) In section 3701(b)(3)(A)(ii), strike “the Walsh-Healey Act (41 U.S.C. 35 et  
26 seq.)” and substitute “chapter 65 of title 41”.

27 (20) In section 3704(b)(1), strike “sections 4 and 5 of the Walsh-Healey Act (41  
28 U.S.C. 38, 39)” and substitute “sections 6506 and 6507 of title 41”.

29 (21) In section 3707, strike “section 4 of the Office of Federal Procurement Policy  
30 Act (41 U.S.C. 403)” and substitute “section 103 of title 41”.

31 (22) In section 6111(b)(2)(D), strike “section 3709 of the Revised Statutes (41  
32 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

33 (23) In section 8711(d), strike “section 3709 of the Revised Statutes (41 U.S.C.  
34 5)” and substitute “section 6101(b) to (d) of title 41”.

35 (24) In section 11101—

36 (A) in paragraph (1), strike “section 4 of the Office of Federal Procurement  
37 Policy Act (41 U.S.C. 403)” and substitute “section 103 of title 41”; and

38 (B) in paragraph (2), strike “section 4 of the Act (41 U.S.C. 403)” and  
39 substitute “section 133 of title 41”.

1 (m) TITLE 44.—Title 44, United States Code, is amended as follows:

2 (1) In the chapter analysis for chapter 3, in the item for section 311, strike “the  
3 Federal Property and Administrative Services Act” and substitute “subtitle I of title  
4 40 and ~~part~~ **division** C of subtitle I of title 41”.

5 (2) In section 311—

6 (A) in the section catchline, strike “the Federal Property and Administrative  
7 Services Act” and substitute “subtitle I of title 40 and ~~part~~ **division** C of subtitle  
8 I of title 41”;

9 (B) in subsection (a), strike “title III of the Federal Property and  
10 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
11 “~~part~~**division** C of subtitle I of title 41”; and

12 (C) in subsection (c), strike “section 3709 of the Revised Statutes (41 U.S.C.  
13 5)” and substitute “section 6101(b) to (d) of title 41”.

14 (n) **TITLE 46.—Section 51703(b)(2) of title 46, United States Code, is amended by**  
15 **striking “section 3709 of the Revised Statutes (41 U.S.C. 5)” and substituting**  
16 **“section 6101(b) to (d) of title 41”.**

17 (o) TITLE 49.—Title 49, United States Code, is amended as follows:

18 (1) In section 103(e), strike “title III of the Federal Property and Administrative  
19 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute “~~part~~**division** C of  
20 subtitle I of title 41”.

21 (2) In section 1113(b)(1)(B) strike “section 3709 of the Revised Statutes (41  
22 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

23 (3) In section 5334(j)(2), strike “Section 3709 of the Revised Statutes (41 U.S.C.  
24 5)” and substitute “Section 6101(b) to (d) of title 41”.

25 (4) In section 10721, strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)”  
26 and substitute “Section 6101(b) to (d) of title 41”.

27 (5) In section 13712, strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)”  
28 and substitute “Section 6101(b) to (d) of title 41”.

29 (6) In section 15504, strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)”  
30 and substitute “Section 6101(b) to (d) of title 41”.

31 (7) In section 40110—

32 (A) in subsection (d)(2)(A), strike “Title III of the Federal Property and  
33 Administrative Services Act of 1949 (41 U.S.C. 252–266)” and substitute  
34 “~~Part~~**Division** C of subtitle I of title 41”;

35 (B) in subsection (d)(2)(B), strike “The Office of Federal Procurement  
36 Policy Act (41 U.S.C. 401 et seq.)” and substitute “~~Part~~**Division** B of subtitle I  
37 of title 41”;

38 (C) in subsection (d)(2)(C), strike “, except for section 315 (41 U.S.C. 265).  
39 For the purpose of applying section 315 of that Act to the system,” and

1 substitute “. However, section 4705 of title 41 shall apply to the new  
2 acquisition management system developed and implemented pursuant to  
3 paragraph (1). For the purpose of applying section 4705 of title 41 to the  
4 system,”; and

5 (D) in subsection (d)(3)—

6 (i) in the heading, strike “THE OFFICE OF FEDERAL PROCUREMENT POLICY  
7 ACT” and substitute “~~part~~“DIVISION B OF SUBTITLE I OF TITLE 41”;

8 (ii) before subparagraph (A), strike “section 27 of the Office of Federal  
9 Procurement Policy Act (41 U.S.C. 423)” and substitute “chapter 21 of  
10 title 41”; and

11 (iii) in subparagraph (A), strike “Subsections (f) and (g)” and substitute  
12 “Sections 2101 and 2106 of title 41”.

13 (8) In section 40118(f)(2), strike “section 4(12) of the Office of Federal  
14 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title  
15 41”.

16 (9) In section 47305(d), strike “Section 3709 of the Revised Statutes (41 U.S.C.  
17 5)” and substitute “Section 6101(b) to (d) of title 41”.

## 18 ~~SEC. 6. TECHNICAL AMENDMENTS.~~

19 ~~(a) Sections 6901, 6905, 6907, and 6908. Effective~~  
20 ~~January 6, 2007, or the date of enactment of this Act,~~  
21 ~~whichever is later, title 41, United States Code, is amended~~  
22 ~~as follows:~~

23 ~~(1) Section 6901 is amended to read as follows:~~

24 ~~“6901. Definitions~~

25 ~~“In this chapter:~~

26 ~~“(1) Administrator. The term ‘Administrator’ means the~~  
27 ~~Administrator for Federal Procurement Policy appointed~~  
28 ~~pursuant to section 1102 of this title.~~

29 ~~“(2) Agency board or agency board of contract appeals.—~~  
30 ~~The term ‘agency board’ or ‘agency board of contract~~  
31 ~~appeals’ means—~~

32 ~~“(A) the Armed Services Board;~~

1 ~~“(B) the Civilian Board;~~

2 ~~“(C) the board of contract appeals of the Tennessee Valley~~  
3 ~~Authority; or~~

4

5 \* 1 moved from here; text not shown

6 ~~“(3) Agency head.—The term ‘agency head’ means the~~  
7 ~~head and any assistant head of an executive agency. The~~  
8 ~~term may include the chief official of a principal division of~~  
9 ~~an executive agency if the head of the executive agency so~~  
10 ~~designates that chief official.~~

11

12 \* 2 moved from here; text not shown

13

14 \* 3 moved from here; text not shown

15 ~~“(6) Contracting officer.—The term ‘contracting officer’—~~

16 ~~“(A) means an individual who, by appointment in~~  
17 ~~accordance with applicable regulations, has the authority to~~  
18 ~~make and administer contracts and to make determinations~~  
19 ~~and findings with respect to contracts; and~~

20 ~~“(B) includes an authorized representative of the~~  
21 ~~contracting officer, acting within the limits of the~~  
22 ~~representative’s authority.~~

23 ~~“(7) Contractor.—The term ‘contractor’ means a party to a~~  
24 ~~Federal Government contract other than the Federal~~  
25 ~~Government.~~

26 ~~“(8) Executive agency.—The term ‘executive agency’~~  
27 ~~means—~~

1 ~~“(A) an executive department as defined in section 101 of~~  
2 ~~title 5;~~

3 ~~“(B) a military department as defined in section 102 of title~~  
4 ~~5;~~

5 ~~“(C) an independent establishment as defined in section~~  
6 ~~104 of title 5, except that the term does not include the~~  
7 ~~Government Accountability Office; and~~

8 ~~“(D) a wholly owned Government corporation as defined in~~  
9 ~~section 9101(3) of title 31.~~

10 ~~“(9) Misrepresentation of fact.—The term~~  
11 ~~‘misrepresentation of fact’ means a false statement of~~  
12 ~~substantive fact, or conduct that leads to a belief of a~~  
13 ~~substantive fact material to proper understanding of the~~  
14 ~~matter in hand, made with intent to deceive or mislead.”.~~

15 ~~(2) Section 6905 is amended to read as follows:~~

16 ~~“6905. Agency boards~~

17 ~~“(a) Armed Services Board.—~~

18

19 \* 4 moved from here; text not shown

20

21 \* 5 moved from here; text not shown

22 ~~“(b) Civilian Board.—~~

23

24 \* 6 moved from here; text not shown

25 ~~“(2) Membership.—~~

26

1 \* 7 moved from here; text not shown

2

3 \* 8 moved from here; text not shown

4

5 \* 9 moved from here; text not shown

6

7 \* 10 moved from here; text not shown

8 ~~“(4) Functions.—~~

9

10 \* 11 moved from here; text not shown

11

12 \* 12 moved from here; text not shown

13

14 \* 13 moved from here; text not shown

15

16 \* 14 moved from here; text not shown

17 ~~“(c) Tennessee Valley Authority Board.—~~

18 ~~“(1) Establishment.— The Board of Directors of the~~  
19 ~~Tennessee Valley Authority may establish a board of~~  
20 ~~contract appeals of the Tennessee Valley Authority of an~~  
21 ~~indeterminate number of members.~~

22 ~~“(2) Appointment of members and compensation.— The~~  
23 ~~Board of Directors of the Tennessee Valley Authority shall~~  
24 ~~establish criteria for the appointment of members to the~~  
25 ~~agency board established under paragraph (1), and shall~~  
26 ~~designate a chairman of the agency board. The chairman~~

1 ~~and other members of the agency board shall receive~~  
2 ~~compensation, at the daily equivalent of the rates~~  
3 ~~determined under section 5372a of title 5, for each day they~~  
4 ~~are engaged in the actual performance of their duties as~~  
5 ~~members of the agency board.~~

6 ~~“(d) Postal Service Board.—~~

7

8 \* 15 moved from here; text not shown

9

10 \* 16 moved from here; text not shown

11

12 \* 17 moved from here; text not shown

13 ~~“(e) Jurisdiction.—~~

14 ~~“(1) In general.—~~

15

16 \* 18 moved from here; text not shown

17

18 \* 19 moved from here; text not shown

19

20 \* 20 moved from here; text not shown

21

22 \* 21 moved from here; text not shown

23 ~~“(2) Relief.— In exercising this jurisdiction, an agency~~  
24 ~~board may grant any relief that would be available to a~~  
25 ~~litigant asserting a contract claim in the United States Court~~  
26 ~~of Federal Claims.~~

1 ~~“(f) Subpoena, Discovery, and Deposition.—A member of~~  
2 ~~an agency board of contract appeals may administer oaths~~  
3 ~~to witnesses, authorize depositions and discovery~~  
4 ~~proceedings, and require by subpoena the attendance of~~  
5 ~~witnesses, and production of books and papers, for the~~  
6 ~~taking of testimony or evidence by deposition or in the~~  
7 ~~hearing of an appeal by the agency board. In case of~~  
8 ~~contumacy or refusal to obey a subpoena by a person who~~  
9 ~~resides, is found, or transacts business within the~~  
10 ~~jurisdiction of a United States district court, the court, upon~~  
11 ~~application of the agency board through the Attorney~~  
12 ~~General, or upon application by the board of contract~~  
13 ~~appeals of the Tennessee Valley Authority, shall have~~  
14 ~~jurisdiction to issue the person an order requiring the~~  
15 ~~person to appear before the agency board or a member of~~  
16 ~~the agency board, to produce evidence or to give testimony,~~  
17 ~~or both. Any failure of the person to obey the order of the~~  
18 ~~court may be punished by the court as contempt of court.~~

19 ~~“(g) Decisions.—An agency board shall—~~

20 ~~“(1) to the fullest extent practicable provide informal,~~  
21 ~~expeditious, and inexpensive resolution of disputes;~~

22 ~~“(2) issue a decision in writing or take other appropriate~~  
23 ~~action on each appeal submitted; and~~

24 ~~“(3) mail or otherwise furnish a copy of the decision to the~~  
25 ~~contractor and the contracting officer.”.~~

26 ~~(3) In section 6907(a)(2) before subparagraph (A), strike~~  
27 ~~“agency board” and substitute “board of contract appeals”.~~

28 ~~(4) In section 6908(d)(2), strike “agency board” and~~  
29 ~~substitute “board of contract appeals”.~~

1 ~~(b) Contingent Amendments.—~~

2 ~~(1) If enacted before January 6, 2007.— If this Act is~~  
3 ~~enacted before January 6, 2007, section 847 of National~~  
4 ~~Defense Authorization Act for Fiscal Year 2006 (Public~~  
5 ~~Law 109163, 119 Stat. 3391) is amended as follows:~~

6 ~~(A) Subsection (a) is repealed.~~

7 ~~(B) Subsection (f)(1) is amended by—~~

8 ~~(i) striking “of 1978” and inserting “of title 41”; and~~

9 ~~(ii) striking “section 42 of the Office of Federal~~  
10 ~~Procurement Policy Act” and inserting “section 6905(b)(2)~~  
11 ~~of title 41”.~~

12 ~~(2) If enacted on or after January 6, 2007.— If this Act is~~  
13 ~~enacted on or after January 6, 2007—~~

14 ~~(A) section 5372a(a)(1) of title 5, United States Code, is~~  
15 ~~amended by striking “section 42 of the Office of Federal~~  
16 ~~Procurement Policy Act” and inserting “section 6905(b)(2)~~  
17 ~~of title 41”; and~~

18 ~~(B) section 42 of the Office of Federal Procurement Policy~~  
19 ~~Act (41 U.S.C. 438) is repealed.~~

20 ~~SEC. 7~~ **SEC. 6.** TRANSITIONAL AND SAVINGS  
21 PROVISIONS.

22 (a) CUTOFF DATE.—This Act replaces certain provisions of law enacted on or before  
23 ~~March 31, 2006~~ **January 15, 2007**. If a law enacted after that date amends or repeals a  
24 provision replaced by this Act, that law is deemed to amend or repeal, as the case may be,  
25 the corresponding provision enacted by this Act. If a law enacted after that date is  
26 otherwise inconsistent with this Act, it supersedes this Act to the extent of the  
27 inconsistency.

28 (b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining  
29 whether one provision of law supersedes another based on enactment later in time, the  
30 date of enactment of a provision enacted by this Act is deemed to be the date of  
31 enactment of the provision it replaced.

1 (c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision of law  
2 replaced by this Act, including a reference in a regulation, order, or other law, is deemed  
3 to refer to the corresponding provision enacted by this Act.

4 (d) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation,  
5 order, or other administrative action in effect under a provision of law replaced by this  
6 Act continues in effect under the corresponding provision enacted by this Act.

7 (e) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense  
8 committed under a provision of law replaced by this Act is deemed to have been taken or  
9 committed under the corresponding provision enacted by this Act.

## 10 SEC. 8 7. REPEALS.

11 (a) INFERENCE OF REPEAL.—The repeal of a law by this Act may not be construed as a  
12 legislative inference that the provision was or was not in effect before its repeal.

13 (b) REPEALER SCHEDULE.—The laws specified in the following schedule are repealed,  
14 except for rights and duties that matured, penalties that were incurred, and proceedings  
15 that were begun before the date of enactment of this  
16 Act.7,L2,p7,7/7,g1,t1,s24,r32,r102,4,r36,20,12

### 17 Schedule of Laws Repealed

18 Statutes at Large1Date1Chapter or Public Law1Section1Statutes at  
19 Large2Volume2Page1U.S. Code (title 41 unless otherwise specified)2Existing2Proposed

20 1875

21 Mar. 313321845510

22 1884

23 July 7332(words after “fifty five thousand dollars” in 3d par. under heading  
24 “Miscellaneous Objects Under the Treasury Department”)23204246308

25 1920

26 June 5240(last par. under heading “Purchase of Articles Manufactured at Government  
27 Arsenals”)41975236307

28 1921

29 June 30331 (last proviso on p. 78)427811a6302

30 1922

31 July 1259(1st proviso on p. 812)42812236307

32 1926

33 May 13294(4th complete par. (related to R.S. 3741) on p. 547)4454716c

34 1927

35 Jan. 1227(2d complete par. (related to R.S. 3741) on p. 936)4493616a

36 1933

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1 Mar. 3212title III, 147152010c8301  
2 title III, 247152010a8302  
3 title III, 347152010b8303  
4 title III, 410b-1  
5 June 1610154830524a  
6 1934  
7 Jan. 255(related to R.S. 3741)48337226306  
8 June 165531-64897428-33  
9 1935  
10 Aug. 298154999034  
11 1936  
12 June 308811 (matter before subsec. (a) less words related to definition of “agency of the  
13 United States”)492036356502  
14 1 (matter before subsec. (a) related to definition of “agency of the United  
15 States”)492036356501  
16 1(a)-(d)492036356502  
17 2492037366503  
18 3492037376504  
19 4492038386506  
20 5492038396507  
21 6492038406508  
22 7492039416501  
23 8492039426511  
24 9492039436505  
25 10(a)43a6509  
26 10(b) (1st sentence)43a6507  
27 10(b) (last sentence), (c)43a6509  
28 1143b6510  
29 1249203944  
30 13492039456502  
31 1938  
32 June 256971521196468502  
33 2521196478503

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1           3521196488504  
2           452119648a8505  
3           552119648b8501  
4           652119648c8506  
5           746 note  
6       1939  
7       Aug. 441813 (related to R.S. 3744)53119716d  
8       1940  
9       June 18396(last par. (related to R.S. 3709) under heading “Botanic Garden”)544746kk  
10       (last par. (related to R.S. 3744) under heading “Botanic Garden”)5447416b  
11       June 24412545046b6102  
12       Oct. 108512(a)5411106a6102  
13           2(f)5411106a6102  
14           2(h)5411106a6102  
15           2(j)5411106a6102  
16           3(a)5411116b  
17           3(b)5411116b  
18       1942  
19       June 22432156375496309  
20           256376506309  
21       July 2472(1st complete par. on p. 493)564936  
22       1944  
23       July 13581, 2(a)58649101, 102  
24           358650103  
25           4(b)–13(c)58651104–113  
26           13(d)58662113  
27           13(e)–1558662113–115  
28           17, 18(a)58665117, 118  
29           18(c)–(e)58666118  
30           19(c)58667119  
31           20–2558668120–125  
32           2658671101 note  
33           2758671101 note

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1       1946  
2    Mar. 8801603751  
3       26037528701  
4       36037538702  
5       46037548707  
6       56037558706  
7       66037568705  
8       76037578703  
9       86037588704  
10   Aug. 27449(c)6080956101  
11       18608115a6101  
12       1949  
13   June 3028830163393251  
14       302(a)633932523101  
15       302(b)633932523104  
16       302(c)(1)633932523106  
17       302(c)(2)2523301  
18       302A, 302B252a, 252b3101  
19       302C252c4709  
20       303(a)633952533301  
21       303(b)633952533302  
22       303(c)-(f)633952533303  
23       303(g)633952533304  
24       303(h)2533301  
25       303(i)2533105  
26       303A253a3305  
27       303B(a), (b)253b3701  
28       303B(c)253b3702  
29       303B(d)253b3703  
30       303B(e)253b3704  
31       303B(f)253b3705  
32       303B(g)253b3704, 3705  
33       303B(h)253b3706

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- 1 303B(i)253b3707
- 2 303B(j)253b3307
- 3 303B(k), (l)253b3708
- 4 303B(m)253b4702
- 5 303C253c3310
- 6 303D253d4703
- 7 303F253f3309
- 8 303G253g4704
- 9 303H253h4103
- 10 303I253i4105
- 11 303J253j4106
- 12 303K253k4101
- 13 303L253l3902
- 14 303M253m3308
- 15 304(a)633952543901
- 16 304(b)633952543905
- 17 304A(a)254b3502
- 18 304A(b)254b3503
- 19 304A(c)254b3504
- 20 304A(d)254b3505
- 21 304A(e)254b3506
- 22 304A(f)254b3507
- 23 304A(g)254b3508
- 24 304A(h)254b3501
- 25 304B254c3903
- 26 304C254d4706
- 27 305(a)633962554501
- 28 305(b)2554502
- 29 305(c)633962554502
- 30 305(d)633962554503
- 31 305(e)2554504
- 32 305(f)2554505
- 33 305(g)2554506

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1	306(a)–(d)2564303
2	306(e)2564304
3	306(f)2564305
4	306(g)2564306
5	306(h)2564307
6	306(i)2564308
7	306(j)2564309
8	306(k)2564310
9	306(l)(1)2564301
10	306(l)(2)2564302
11	306(m)2564301
12	307633962574701
13	309(a)63397259151
14	309(b)259152
15	309(c)(1)259111
16	309(c)(2)259112
17	309(c)(3)259114
18	309(c)(4)259107
19	309(c)(5)259113
20	309(c)(6)259116
21	309(c)(7)259109
22	309(c)(8), (9)259108
23	309(c)(10)259115
24	309(c)(11)259103
25	309(c)(12)259110
26	309(c)(13)259102
27	309(c)(14)259105
28	309(d)259153
29	309(e)259106
30	310633972603101
31	3112613102
32	3122624701
33	3132633103

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1           3142643306  
2           314A (“commercial item”)264a (“commercial item”)103  
3           314A (“nondevelopmental item”)264a (“nondevelopmental item”)110  
4           314A (“component”)264a (“component”)105  
5           314A (“commercial component”)264a (“commercial component”)102  
6           314B264b3306  
7           3152654705  
8           3162663105  
9    Oct. 2978763363102410d8303  
10          1950  
11   Sept. 584910(a)64591256a4707  
12          1952  
13   July 1473966627113, 113 note  
14          1954  
15   May 1119916881321  
16          26881322  
17          1957  
18   July 185–75(last par. on p. 251)712516a  
19          1961  
20   Aug. 387–125301752796b  
21          1962  
22   Sept. 587–63876437254a4708  
23          1965  
24   July 2789–90(2d par. on p. 276)792766a–16102  
25   Oct. 2289–2861791034351 note  
26          2(a) (words before par. (1) related to applicability)7910343516702  
27          2(a) (words before par. (1) related to required contract terms), (1)–  
28          (5)7910343516703  
29          2(b)7910343516704  
30          37910353526705  
31          47910353536707  
32          5(a)7910353546706  
33          5(b)7910353546705

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2 77910353566702  
3 87910363576701  
4 9791036351 note  
5 103586707  
6 1974  
7 Aug. 3093–4004(1)88797403133  
8 4(2)88797403111  
9 4(3)88797403112  
10 4(4)88797403114  
11 4(5)403132  
12 4(6)403107  
13 4(7)403113  
14 4(8)403116  
15 4(9)403109  
16 4(10) (“item”, “item of supply”)403108  
17 4(10) (“supplies”)403115  
18 4(11)403134  
19 4(12)403103  
20 4(13)403110  
21 4(14)403105  
22 4(15)403102  
23 4(16)403131  
24 4(17)4031301  
25 5(a)887974041101  
26 5(b)887974041102  
27 6(a)–(c)887974051121  
28 6(d), (e)887974051122  
29 6(f)887974051121  
30 6(g)887974051122  
31 6(h)(1)887974051130  
32 6(h)(2)887974052304  
33 6(i)887974051125

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1	6(j)4051126
2	6(k)4051131
3	7887984061701
4	9887994081121
5	11887994101101
6	12887994111122
7	14(a)888004122306
8	14(b)888004122305
9	154131124
10	164141702
11	16A(a)–(c)414b1311
12	16A(d), (e)414b1312
13	184161707
14	194171710
15	204181704
16	21418a2302
17	22418b1706
18	234191708
19	25(a), (b)4211302
20	25(c)–(f)4211303
21	26(a)–(e)4221501
22	26(f)–(h)(1)4221502
23	26(h)(2)–(4)4221503
24	26(i)422
25	26(j)4221504
26	26(k)4221505
27	26(l)4221506
28	27(a), (b)4232102
29	27(c)4232103
30	27(d)4232104
31	27(e)4232105
32	27(f)4232101
33	27(g)4232106

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1 27(h)4232107  
2 294251304  
3 304262301  
4 314271901  
5 324281902  
6 32A428a1903  
7 334291905  
8 344301906  
9 35(a), (b)4311907  
10 35(c)431104  
11 35A431a1908  
12 364321709  
13 374331703  
14 384342307  
15 394351127  
16 404362308  
17 414372309  
18 **424386905**  
19 1978  
20 Oct. 2495–507222 (1st sentence)921771405a1121  
21 222 (last sentence)921771405a1123  
22 Nov. 195–5631922383601 note  
23 29223836016901  
24 39223836026902  
25 49223846036902  
26 59223846046903  
27 6(a) (1st, 2d sentences)9223846056903  
28 6(a) (3d, 4th sentences)6056903  
29 6(a) (5th–last sentences), (b), (c)(1)–(5)9223846056903  
30 6(c)(6), (7), (d), (e)6056903  
31 79223856066904  
32 8(a)–(e)9223856076905  
33 8(f)9223866076906

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1 8(g)9223876076907  
2 ~~8(h)9223876076905~~  
3 ~~8(i)922387607~~  
4 99223876086906  
5 10(a)9223886096904  
6 10(b)–(e)9223886096907  
7 10(f)6096907  
8 119223886106905  
9 129223896116909  
10 139223896126908  
11 15922391613  
12 16922391601 note  
13 1984  
14 Oct. 3098–577502983085414a1705  
15 1988  
16 Oct. 1100–46381411022270–47405b2303  
17 Oct. 25100–5335021022697417a1711  
18 Nov. 18100–69051511024304701 note  
19 515210243047018102  
20 515310243067028103  
21 515410243077038104  
22 515510243077048105  
23 515610243087058106  
24 5157, 51581024308706, 7078101  
25 51601024308701 note  
26 1992  
27 Oct. 29102–572907(a)(3)1064518611 note6909  
28 1993  
29 Nov. 30103–160849(c), (d)107172510b–28304  
30 1994  
31 Oct. 13103–3551054(b)1083265253h note4102  
32 80021083386264 note3306  
33 1996

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1 Sept. 23104–201827110261110b–38305  
2 1997  
3 June 12105–187004111192253l–13904  
4 1999  
5 Sept. 29106–57207113423253l–23904  
6 Oct. 5106–65804113704253h note4104  
7 2000  
8 Dec. 21106–5541(a)(2) [title I, 101]1142763A–100253l–33904  
9 1(a)(2) [title I, 110]1142763A–108253l–43904  
10 2003  
11 Feb. 20108–7div. H, title I, 5117350253l–53904  
12 div. H, title I, 1041173546a–36102  
13 div. H, title I, 1002117357253l–63904  
14 div. H, title I, 11021173706a–46102  
15 div. H, title I, 1202117373253l–73904  
16 Aug. 15108–724117889253l–83904  
17 Sept. 30108–878033117107910b–28304  
18 Nov. 24108–1361412(a)1171664433 note1703  
19 14131171665433 note1703  
20 14141171666433 note1128  
21 14281171670253a note3305  
22 1431(b)1171671405 note1129  
23 14321171672264 note3306  
24 14411171673428a note1904  
25 2004  
26 Oct. 28108–375807(c)1182011431a note1908  
27 2006  
28 ~~Jan. 6109163847(a)1193391438See 6(b)(2)(C) of bill.~~  
29 ~~847(d)(1)1193393601See 6(b)(2)(A) of bill.~~  
30 ~~847(d)(2)(4)1193393607See 6(b)(2)(C) of bill.~~3 **Oct. 17109–364834(b), (c) (related to**  
31 **(b)1202333253i note41053**,L2,p7,7/7,g1,t1,s50,20,20  
32 Revised Statutes1Revised Statutes Section1United States Code (title  
33 41)2Existing2Proposed

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- 3 3732116301
- 4 3733126303
- 5 3735136304
- 6 3736146301
- 7 3737156305
- 8 3741226306