

Public Law 98-191
98th Congress

An Act

To revise the authority and responsibility of the Office of Federal Procurement Policy, to authorize appropriations for the Office of Federal Procurement Policy for an additional four fiscal years, and for other purposes.

Dec. 1, 1983

[H.R. 2293]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Office of Federal Procurement Policy Act Amendments of 1983".

Office of Federal
Procurement
Policy Act
Amendments of
1983.
41 USC 401 note.

REFERENCE

SEC. 2. Except as otherwise specifically provided, whenever in this Act a reference is expressed in terms of a section or other provision, the reference shall be considered to be made to a section or other provision, respectively, of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

DECLARATION OF POLICY

SEC. 3. Section 2 (41 U.S.C. 401) is amended to read as follows:

"DECLARATION OF POLICY

"SEC. 2. It is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal Government by—

- "(1) promoting full and open competition;
- "(2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost;
- "(3) promoting the development of simplified uniform procurement processes;
- "(4) promoting the participation of small business concerns;
- "(5) supporting the continuing development of a competent, professional work force;
- "(6) eliminating fraud and waste in the procurement process;
- "(7) eliminating redundant administrative requirements placed on contractor and Federal procurement officials;
- "(8) promoting fair dealings and equitable relationships with the private sector;
- "(9) ensuring that payment is made in a timely manner and only for value received;
- "(10) requiring, to the extent practicable, the use of commercial products to meet the Government's needs;
- "(11) requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract;
- "(12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements; and

“(13) promoting, whenever feasible, the use of specifications which describe needs in terms of functions to be performed or the performance required.”.

DEFINITIONS

SEC. 4. Section 4 (41 U.S.C. 403) is amended to read as follows:

“DEFINITIONS

“SEC. 3. As used in this Act—

“(1) the term ‘executive agency’ means—

“(A) an executive department specified in section 101 of title 5, United States Code;

“(B) a military department specified in section 102 of such title;

“(C) an independent establishment as defined in section 104(1) of such title; and

“(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31, United States Code;

“(2) the term ‘procurement’ includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout;

“(3) the term ‘procurement system’ means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function;

“(4) the term ‘single system of Government-wide procurement regulations’ means (A) a single Government-wide procurement regulation issued and maintained jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapter 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation issued as provided in clause (A), which shall be limited to (i) regulations essential to implement Government-wide policies and procedures within the agency and (ii) additional policies and procedures required to satisfy the specific and unique needs of the agency; and

“(5) the term ‘standards’ means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system.”.

AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

SEC. 5. Section 6 (41 U.S.C. 405) is amended to read as follows:

“AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

“SEC. 6. (a) The Administrator shall provide overall direction of procurement policy and leadership in the development of procure-

31 USC 9101 et
seq.

10 USC 2301 et
seq.

ment systems of the executive agencies. To the extent that the Administrator considers appropriate, in carrying out the policies and functions set forth in this Act, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies which shall be implemented in the single system of Government-wide procurement regulations and shall be followed by executive agencies in the procurement of—

“(1) property other than real property in being;

“(2) services, including research and development; and

“(3) construction, alteration, repair, or maintenance of real property.

“(b) In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner, the Administrator may, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this Act, prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—

Regulations,
procedures and
forms.

“(1) property other than real property in being;

“(2) services, including research and development; and

“(3) construction, alteration, repair, or maintenance of real property.

“(c) The authority of the Administrator under this Act shall not be construed to—

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

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

“(d) The functions of the Administrator shall include—

“(1) providing leadership and ensuring action by the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms;

“(2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;

“(3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;

“(4) providing for a computer-based Federal Procurement Data System which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall collect, develop, and disseminate procurement data;

Federal
Procurement
Data System.

“(5) providing for a Federal Acquisition Institute which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall—

Federal
Acquisition
Institute.

“(A) foster and promote Government-wide career management programs for a professional procurement work force; and

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

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

“(7) developing standard contract forms and contract language in order to reduce the Government's cost of procuring property and services and the private sector's cost of doing business with the Government; and

“(8) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

“(e) In carrying out the functions set forth in subsection (c), the Administrator—

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

“(2) may, with the concurrence of the heads of affected executive agencies, designate an executive agency or executive agencies to assist in the performance of such functions; and

“(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in the performance of any of the other functions which the Administrator considers appropriate.

“(f) The Director of the Office of Management and Budget may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in section 2 or any policies, regulations, or procedures issued pursuant to subsection (a).

“(g) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

“(h) Nothing in this Act shall be construed to—

“(1) impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

“(2) limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

“(i)(1) With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which the Administrator considers appropriate and which shall be followed by such executive agencies in providing for the procurement, to the extent required under such programs, of property or services referred to in clauses (1), (2), and (3) of subsection (a) by recipients of Federal grants or assistance under such programs.

Procurement regulation.

40 USC 471 note.

Policies, regulations, procedures, and forms.

“(2) Nothing in paragraph (1) shall be construed to—

“(A) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

“(B) authorize any action by such recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.”.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. Section 11 (41 U.S.C. 410) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose, \$4,500,000 for the fiscal year ending September 30, 1984, and for each of the three succeeding fiscal years.”.

EXPERIMENTAL PROGRAMS; ADDITIONAL PROCUREMENT RESPONSIBILITIES OF EXECUTIVE AGENCIES

SEC. 7. The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following new sections:

“TESTS OF INNOVATIVE PROCUREMENT METHODS AND PROCEDURES

“SEC. 15. (a) The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 2. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

41 USC 413.

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

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

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

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

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

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

A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

“(b) If the Administrator determines that it is necessary to waive the application of any provision of law in order to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Government

Notification to congressional committees.

Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carrying out the proposed program.

“EXECUTIVE AGENCY RESPONSIBILITIES

41 USC 414.

“SEC. 16. To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

“(1) increase the use of effective competition in procurement by the executive agency;

“(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

“(A) direct access to the head of the major organizational element of the executive agency served; and

“(B) comparative equality with organizational counterparts;

“(3) designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

“(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.

“STUDIES AND REPORTS

41 USC 415.

“SEC. 17. (a) The Administrator shall conduct studies and issue a report on the extent of competition in the award of subcontracts by Federal prime contractors including an evaluation of the data available on subcontracts awarded in fiscal year 1982 with respect to (1) the source selection method used in awarding such subcontracts, (2) the type of subcontracts awarded, (3) the dollar value of such subcontracts, (4) the size of the subcontractors which were awarded the subcontract (by number of employees), and (5) the geographical location of such subcontractors. The report shall also include recommendations for improvements, if appropriate, in the extent of competition in the awarding of subcontracts and in the collection of data on such subcontract awards.

“(b) The report required under subsection (a) of this section shall be completed by April 1, 1984, and shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives not later than April 15, 1984.”

Completion date.
Submittal to
congressional
committees.

MISCELLANEOUS AMENDMENTS

SEC. 8. (a) Section 8 (41 U.S.C. 407) is amended—

(1) in subsection (a)—

(A) by striking out “(1)” at the beginning of paragraph (1); and

(B) by striking out paragraphs (2), (3), and (4);

(2) in subsection (b)—

(A) by striking out the first sentence and inserting in lieu thereof “At least 30 days prior to the effective date of any policy or regulation prescribed under section 6(a), the Administrator shall transmit to the Congress a report on the proposed policy or regulation.”; and

(B) by inserting “or regulation” after “policy” each place it appears in clauses (1), (2), and (3) in the second sentence of such subsection; and

(3) by striking out “any policy” in subsection (c) and inserting in lieu thereof “any policy or regulation”.

(b) Section 10 (41 U.S.C. 409) is amended to read as follows: “SEC. 10. Procurement policies, regulations, procedures, or forms in effect on the date of enactment of the Office of Federal Procurement Policy Act Amendments of 1983 shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.”

(c) Subsection (a) of section 12 (41 U.S.C. 411) is amended to read as follows:

“(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power of the Administrator under this Act (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the head of such executive agency or at the direction of the President.”

(d)(1) Sections 201(a)(1), 201(c), and 206(a)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)(1), 481(c), 487(a)(4)) are each amended by inserting “and regulations” after “subject to policy directives”.

(2) Section 602(c) of such Act (40 U.S.C. 474) is amended by inserting “except as otherwise provided by the Office of Federal Procurement Policy Act, and” after “any law inconsistent herewith,”.

SMALL PURCHASES

SEC. 9. (a)(1) Section 302(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(3)) is amended by striking out “\$10,000” and inserting in lieu thereof “\$25,000”.

(2) Section 201(a)(1), 201(c), and 206(a)(4) of such Act (40 U.S.C. 481(a)(1), 481(c), 487(a)(4)) are each amended by striking out “subject to policy directives” and inserting in lieu thereof “subject to regulations”.

(3) Section 602(c) of such Act (40 U.S.C. 474) is amended by inserting “except as otherwise provided by the Office of Federal Procurement Policy Act, and” after “any law inconsistent herewith,”.

Report to
Congress

Continuing
effect.

Ante, p. 1325.

(b) Clause (1) of the first sentence of section 3709 of the Revised Statutes (41 U.S.C. 5) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(c) The Act entitled "An Act making appropriations for the Legislative Branch for the fiscal year ending June 30, 1966, and for other purposes", approved July 27, 1965 (41 U.S.C. 6a-1), is amended by striking out "\$10,000" in the third full unnumbered paragraph under the heading "Office of Architect of the Capitol" and inserting in lieu thereof "\$25,000".

(d) Clause (3) of the first sentence of section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

STUDY OF WEAPON SYSTEMS SPARE PARTS PROCUREMENT BY THE
DEPARTMENT OF DEFENSE

Review.
Report to
Congress.

SEC. 10. (a) Not later than June 1, 1984, the Office of Federal Procurement Policy (hereinafter in this section referred to as the "Office") shall review the procurement practices, regulations, and reform proposals and programs of the Department of Defense relating to the procurement of spare parts for weapon systems and shall transmit to the Congress a report on the findings, conclusions, and recommendations of the Office relating to such matters. The report shall include (1) an evaluation of the adequacy of the reform proposals and programs to promote practices and the development of directives which will achieve control of costs, economy, and efficiency in the procurement of such spare parts and (2) such recommendations for legislation with respect to the procurement of such spare parts as the Office considers appropriate.

(b)(1) The Secretary of Defense shall furnish to the Office such information on the practices, regulations, and reform proposals and programs of the Department of Defense relating to the procurement of spare parts for weapon systems as the Office considers necessary to carry out subsection (a).

(2) The Inspector General of the Department of Defense shall furnish to the Office such information on the practices of the Department of Defense in procuring spare parts for weapons systems as the Inspector General acquires during his audits of such practices and the Office considers necessary to carry out subsection (a).

Review and
comment.

(c) The Inspector General of the Department of Defense shall have reasonable opportunity to review and comment on the report required by subsection (a) before the report is transmitted to the Congress. The comments of the Inspector General shall be included in such report.

PROCUREMENT PRACTICES OF THE DEPARTMENT OF DEFENSE AT THE
END OF THE FISCAL YEAR

Review.
Report to
Congress.

SEC. 11. (a)(1) Not later than February 1, 1984, the Office of Federal Procurement Policy (hereinafter in this section referred to as the "Office") shall review the procurement actions of the Department of Defense during the one-week period ending September 30, 1983, and transmit to the Congress a report on such review as provided in paragraph (2). In carrying out the preceding sentence, the Office shall review the regulations and administrative and

managerial guidelines applicable to procurement actions of the Department of Defense during the final quarter of a fiscal year.

(2) The report required by paragraph (1) shall include (A) the number and dollar amount of contracts and purchases which were made by the Department of Defense during the one-week period referred to in paragraph (1), (B) the findings and conclusions of the Office on whether the Department of Defense had a bona fide need for the property or services procured by each such contract and purchase, (C) a list of the contracts and purchases which were made by the Department of Defense during such period without formal advertising, including the dollar amount of each such contract or purchase, (D) a list of the contracts and purchases made by the Department of Defense during such period after soliciting bids or proposals from only one source, including the dollar amount of each such contract and purchase, (E) each justification for making each contract and purchase included in the list under clause (C) or (D) without formal advertising or soliciting bids or proposals from more than one source, (F) the findings and conclusions of the Office on whether any regulation or administrative or managerial guideline reviewed pursuant to paragraph (1) (including the requirements of Office of Federal Procurement Policy letter number 81-1) were violated in making any of the contracts or purchases reviewed pursuant to paragraph (1), and (G) such recommendations for legislation and administrative actions relating to the procurement practices of the Department of Defense as the Office considers appropriate to assure economy and efficiency in procurement actions by the Department of Defense during the final quarter of a fiscal year.

(b)(1) The Secretary of Defense shall furnish to the Office such information on the procurement actions of the Department of Defense and the regulations and administrative and managerial guidelines applicable to such actions as the Office considers necessary to carry out subsection (a).

(2) The Inspector General of the Department of Defense shall furnish to the Office such information on the procurement actions of the Department of Defense and the regulations and administrative and managerial guidelines applicable to such actions as the Inspector General has acquired and the Office considers necessary to carry out subsection (a).

(3) The Comptroller General of the United States shall furnish to the Office such information on the procurement actions of the Department of Defense and the regulations and administrative and managerial guidelines applicable to such actions as the Comptroller General has acquired and the Office considers necessary to carry out subsection (a).

(4) Each official furnishing information to the Office under paragraph (1), (2), or (3) shall include with such information all information furnished by such official to the Congress, any committee of the Congress, or any Member of the Congress relating to the procurement actions required by subsection (a) to be reviewed by the Office.

Approved December 1, 1983.

LEGISLATIVE HISTORY—H.R. 2293 (S. 1001):

HOUSE REPORT No. 98-146 (Comm. on Government Operations).

SENATE REPORT No. 98-214 accompanying S. 1001 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 129 (1983):

June 1, considered and passed House.

Nov. 15, considered and passed Senate, amended, in lieu of S. 1001.

Nov. 17, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 19, No. 48 (1983):

Dec. 1, Presidential statement.