

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5414

To enact certain laws relating to public contracts as title 41, United States Code, “Public Contracts”.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2006

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

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## A BILL

To enact certain laws relating to public contracts as title 41, United States Code, “Public Contracts”.

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

3 **SECTION 1. TABLE OF CONTENTS.**

4 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. Technical amendments.
- Sec. 7. Transitional and savings provisions.
- Sec. 8. Repeals.

5 **SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.**

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

8 (b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws  
9 by this Act, the intent is to conform to the understood policy, intent, and  
10 purpose of Congress in the original enactments, with such amendments and  
11 corrections as will remove ambiguities, contradictions, and other imperfec-

1 tions, in accordance with section 205(c)(1) of House Resolution No. 988,  
 2 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C.  
 3 285b(1)).

4 **SEC. 3. ENACTMENT OF TITLE 41, UNITED STATES CODE.**

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

8 **TITLE 41—PUBLIC CONTRACTS**

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13 **PART A—GENERAL**

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SUBCHAPTER I—SUBTITLE DEFINITIONS

**§ 101. Administrator**

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

**§ 102. Commercial component**

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

**§ 103. Commercial item**

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

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

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

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

(2) an item that—

(A) evolved from an item described in paragraph (1) through advances in technology or performance; and

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

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

(A) modifications of a type customarily available in the commercial marketplace; or

(B) minor modifications made to meet Federal Government requirements;

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

(5) installation services, maintenance services, repair services, training services, and other services if—

(A) those services are procured for support of an item referred to in paragraph (1), (2), (3), or (4), regardless of whether the

1 services are provided by the same source or at the same time as  
2 the item; and

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

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

10 (7) any item, combination of items, or service referred to in para-  
11 graphs (1) to (6) even though the item, combination of items, or service  
12 is transferred between or among separate divisions, subsidiaries, or af-  
13 filiates of a contractor; or

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

19 **§ 104. Commercially available off-the-shelf item**

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

21 (1) means an item that—

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

24 (B) is sold in substantial quantities in the commercial market-  
25 place; and

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

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

32 **§ 105. Component**

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

35 **§ 106. Federal Acquisition Regulation**

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

38 **§ 107. Full and open competition**

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

**§ 108. Item and item of supply**

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

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

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

**§ 109. Major system**

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

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

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

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

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

**§ 110. Nondevelopmental item**

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

(1) a commercial item;

(2) a previously developed item of supply that is in use by a department or agency of the Federal Government, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(3) an item of supply described in paragraph (1) or (2) that requires only minor modification or modification of the type customarily avail-

1 able in the commercial marketplace to meet the requirements of the  
2 procuring department or agency; or

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

#### 6 **§ 111. Procurement**

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

#### 11 **§ 112. Procurement system**

12 In this subtitle, the term “procurement system” means the integration of  
13 the procurement process, the professional development of procurement per-  
14 sonnel, and the management structure for carrying out the procurement  
15 function.

#### 16 **§ 113. Responsible source**

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

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

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

24 (3) has a satisfactory performance record;

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

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

29 (6) has the necessary production, construction, and technical equip-  
30 ment and facilities, or the ability to obtain the equipment and facilities;  
31 and

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

#### 34 **§ 114. Standards**

35 In this subtitle, the term “standards” means the criteria for determining  
36 the effectiveness of the procurement system by measuring the performance  
37 of the various elements of the system.

#### 38 **§ 115. Supplies**

39 In this subtitle, the term “supplies”—

40 (1) means an individual part, component, subassembly, assembly, or  
41 subsystem integral to a major system, and other property which may

1 be replaced during the service life of the system, including spare parts  
2 and replenishment spare parts; but

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

5 **§ 116. Technical data**

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

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

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

14 SUBCHAPTER II—PART B DEFINITIONS

15 **§ 131. Acquisition**

16 In part B, the term “acquisition”—

17 (1) means the process of acquiring, with appropriated amounts, by  
18 contract for purchase or lease, property or services (including construc-  
19 tion) that support the missions and goals of an executive agency, from  
20 the point at which the requirements of the executive agency are estab-  
21 lished in consultation with the chief acquisition officer of the executive  
22 agency; and

23 (2) includes—

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

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

28 (C) solicitation and selection of sources;

29 (D) award of contracts;

30 (E) contract performance;

31 (F) contract financing;

32 (G) management and measurement of contract performance  
33 through final delivery and payment; and

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

36 **§ 132. Competitive procedures**

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

40 **§ 133. Executive agency**

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

- 1 (1) an executive department specified in section 101 of title 5;  
 2 (2) a military department specified in section 102 of title 5;  
 3 (3) an independent establishment as defined in section 104(1) of title  
 4 5; and  
 5 (4) a wholly owned Government corporation fully subject to chapter  
 6 91 of title 31.

7 **§ 134. Simplified acquisition threshold**

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

9 SUBCHAPTER III—PART C DEFINITIONS

10 **§ 151. Agency head**

11 In part C, the term “agency head” means the head or any assistant head  
 12 of an executive agency, and may at the option of the Administrator of Gen-  
 13 eral Services include the chief official of any principal organizational unit  
 14 of the General Services Administration.

15 **§ 152. Competitive procedures**

16 In part C, the term “competitive procedures” means procedures under  
 17 which an executive agency enters into a contract pursuant to full and open  
 18 competition. The term also includes—

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

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

24 (3) the procedures established by the Administrator of General Serv-  
 25 ices for the multiple awards schedule program of the General Services  
 26 Administration if—

27 (A) participation in the program has been open to all respon-  
 28 sible sources; and

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

32 (4) procurements conducted in furtherance of section 15 of the Small  
 33 Business Act (15 U.S.C. 644) as long as all responsible business con-  
 34 cerns that are entitled to submit offers for those procurements are per-  
 35 mitted to compete; and

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

39 **§ 153. Simplified acquisition threshold**

40 (1) IN GENERAL.—In part C, the term “simplified acquisition threshold”  
 41 has the meaning provided that term in section 134 of this title, except that,

1 in the case of a contract to be awarded and performed, or purchase to be  
 2 made, outside the United States in support of a contingency operation or  
 3 a humanitarian or peacekeeping operation, the term means an amount equal  
 4 to two times the amount specified for that term in section 134 of this title.

5 (2) SPECIFIC DEFINITIONS RELATING TO SIMPLIFIED ACQUISITION  
 6 THRESHOLD.—In paragraph (1)—

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

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

15 **PART B—OFFICE OF FEDERAL PROCUREMENT POLICY**  
 16 **CHAPTER 11—ESTABLISHMENT OF OFFICE AND**  
 17 **AUTHORITY AND FUNCTIONS OF ADMINISTRATOR**

SUBCHAPTER I—GENERAL

Sec.

1101. Office of Federal Procurement Policy.

1102. Administrator.

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1127. Determining benchmark compensation amount.

1128. Maintaining necessary capability with respect to acquisition of architectural and engi-  
 neering services.

1129. Center of excellence in contracting for services.

1130. Effect of part on other law.

1131. Annual report.

SUBCHAPTER I—GENERAL

18 **§ 1101. Office of Federal Procurement Policy**

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

21 (b) PURPOSES.—The purposes of the Office of Federal Procurement Poli-  
 22 cy are to—

23 (1) provide overall direction of Government-wide procurement poli-  
 24 cies, regulations, procedures, and forms for executive agencies; and

25 (2) promote economy, efficiency, and effectiveness in the procure-  
 26 ment of property and services by the executive branch of the Federal  
 27 Government.  
 28

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

4 **§ 1102. Administrator**

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

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

9 SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE  
 10 ADMINISTRATOR

11 **§ 1121. General authority**

12 (a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator shall  
 13 provide overall direction of procurement policy and leadership in the devel-  
 14 opment of procurement systems of the executive agencies.

15 (b) FEDERAL ACQUISITION REGULATION.—To the extent that the Ad-  
 16 ministrator considers appropriate in carrying out the policies and functions  
 17 set forth in this part, and with due regard for applicable laws and the pro-  
 18 gram activities of the executive agencies, the Administrator may prescribe  
 19 Government-wide procurement policies. The policies shall be implemented in  
 20 a single Government-wide procurement regulation called the Federal Acqui-  
 21 sition Regulation.

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

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

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

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

28 (C) construction, alteration, repair, or maintenance of real prop-  
 29 erty.

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

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

38 (d) WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO  
 39 ACT.—In any instance in which the Administrator determines that the De-  
 40 partment of Defense, the National Aeronautics and Space Administration,  
 41 and the General Services Administration are unable to agree on or fail to

1 issue Government-wide regulations, procedures, and forms in a timely man-  
2 ner, including regulations, procedures, and forms necessary to implement  
3 prescribed policy the Administrator initiates under subsection (b), the Ad-  
4 ministrator, with due regard for applicable laws and the program activities  
5 of the executive agencies and consistent with the policies and functions set  
6 forth in this part, shall prescribe Government-wide regulations, procedures,  
7 and forms which executive agencies shall follow in procuring items listed in  
8 subsection (c)(1).

9 (e) OVERSIGHT OF PROCUREMENT REGULATIONS OF OTHER AGEN-  
10 CIES.—The Administrator, with the concurrence of the Director of the Of-  
11 fice of Management and Budget, and with consultation with the head of the  
12 agency concerned, may deny the promulgation of or rescind any Govern-  
13 ment-wide regulation or final rule or regulation of any executive agency re-  
14 lating to procurement if the Administrator determines that the rule or regu-  
15 lation is inconsistent with any policies, regulations, or procedures issued  
16 pursuant to subsection (b).

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

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

23 (2) interfere with the determination by executive agencies of specific  
24 actions in 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 agen-  
28 cies in establishing, developing, and maintaining the single system of  
29 simplified Government-wide procurement regulations and resolving dif-  
30 ferences among the executive agencies in developing simplified Govern-  
31 ment-wide procurement regulations, procedures, and forms;

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

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

37 (4)(A) providing for and directing the activities of the computer-  
38 based Federal Procurement Data System (including recommending to  
39 the Administrator of General Services a sufficient budget for those ac-  
40 tivities), which shall be located in the General Services Administration,

1 in order to adequately collect, develop, and disseminate procurement  
2 data; and

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

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

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

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

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

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

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

23 (F) develop instructional materials for acquisition personnel in  
24 coordination with private and public acquisition colleges and train-  
25 ing facilities;

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

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

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

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

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

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

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

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

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

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

15 (12) developing policies that will promote achievement of goals for  
16 participation by small businesses, small business concerns owned and  
17 controlled by service-disabled veterans, qualified HUBZone small busi-  
18 ness concerns (as defined in section 3(p) of the Small Business Act (15  
19 U.S.C. 632(p))), small businesses owned and controlled by socially and  
20 economically disadvantaged individuals, and small businesses owned  
21 and controlled by women; and

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

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

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

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

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

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

37 (1) TO ADMINISTRATOR.—Except as otherwise provided by law, only  
38 duties, functions, or responsibilities expressly assigned by this part  
39 shall be assigned, delegated, or transferred to the Administrator.

40 (2) BY ADMINISTRATOR.—

1 (A) WITHIN OFFICE.—The Administrator may make and au-  
2 thorize delegations within the Office of Federal Procurement Pol-  
3 icy that the Administrator determines to be necessary to carry out  
4 this part.

5 (B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator  
6 may delegate, and authorize successive redelegations of, an author-  
7 ity, function, or power of the Administrator under this part (other  
8 than the authority to provide overall direction of Federal procure-  
9 ment policy and to prescribe policies and regulations to carry out  
10 the policy) to another executive agency with the consent of the  
11 head of the executive agency or at the direction of the President.

12 **§ 1123. Small business concerns**

13 In formulating the Federal Acquisition Regulation and procedures to en-  
14 sure compliance with the Regulation, the Administrator, in consultation with  
15 the Small Business Administration, shall—

- 16 (1) conduct analyses of the impact on small business concerns result-  
17 ing from revised procurement regulations; and
- 18 (2) incorporate into revised procurement regulations simplified bid-  
19 ding, contract performance, and contract administration procedures for  
20 small business concerns.

21 **§ 1124. Tests of innovative procurement methods and proce-  
22 dures**

23 (a) IN GENERAL.—The Administrator may develop innovative procure-  
24 ment methods and procedures to be tested by selected executive agencies.  
25 In developing a program to test innovative procurement methods and proce-  
26 dures under this subsection, the Administrator shall consult with the heads  
27 of executive agencies to—

- 28 (1) ascertain the need for and specify the objectives of the program;
- 29 (2) develop the guidelines and procedures for carrying out the pro-  
30 gram and the criteria to be used in measuring the success of the pro-  
31 gram;
- 32 (3) evaluate the potential costs and benefits which may be derived  
33 from the innovative procurement methods and procedures tested under  
34 the program;
- 35 (4) select the appropriate executive agencies or components of execu-  
36 tive agencies to carry out the program;
- 37 (5) specify the categories and types of products or services to be pro-  
38 cured under the program; and
- 39 (6) develop the methods to be used to analyze the results of the pro-  
40 gram.

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

5 (c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines  
6 that it is necessary to waive the application of a provision of law to carry  
7 out a proposed program to test innovative procurement methods and proce-  
8 dures under subsection (a), the Administrator shall transmit notice of the  
9 proposed program to the Committee on Government Reform of the House  
10 of Representatives and the Committee on Homeland Security and Govern-  
11 mental Affairs of the Senate and request that the Committees take the nec-  
12 essary action to provide that the provision of law does not apply with re-  
13 spect to the proposed program. The notification to Congress shall include—

14 (1) a description of the proposed program (including the scope and  
15 purpose of the proposed program);

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

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

21 (4) the executive agencies involved in carrying out the proposed pro-  
22 gram.

### 23 **§ 1125. Recipients of Federal grants or assistance**

24 (a) AUTHORITY.—With due regard to applicable laws and the program  
25 activities of the executive agencies administering Federal programs of  
26 grants or assistance, the Administrator may prescribe Government-wide  
27 policies, regulations, procedures, and forms that the Administrator considers  
28 appropriate and that executive agencies shall follow in providing for the pro-  
29 curement, to the extent required under those programs, of property or serv-  
30 ices referred to in section 1121(e)(1) of this title by recipients of Federal  
31 grants or assistance under the programs.

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

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

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

1 **§ 1126. Policy regarding consideration of contractor past**  
 2 **performance**

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

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

10 (2) policies for the collection and maintenance of information on past  
 11 contract performance that, to the maximum extent practicable, facili-  
 12 tate automated collection, maintenance, and dissemination of informa-  
 13 tion and provide for ease of collection, maintenance, and dissemination  
 14 of information by other methods, as necessary;

15 (3) policies for ensuring that—

16 (A) offerors are afforded an opportunity to submit relevant in-  
 17 formation on past contract performance, including performance  
 18 under contracts entered into by the executive agency concerned,  
 19 other departments and agencies of the Federal Government, agen-  
 20 cies of State and local governments, and commercial customers;  
 21 and

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

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

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

29 **§ 1127. Determining benchmark compensation amount**

30 (a) DEFINITIONS.—In this section:

31 (1) BENCHMARK COMPENSATION AMOUNT.—The term “benchmark  
 32 compensation amount”, for a fiscal year, is the median amount of the  
 33 compensation provided for all senior executives of all benchmark cor-  
 34 porations for the most recent year for which data is available at the  
 35 time the determination under subsection (b) is made.

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

40 (3) COMPENSATION.—The term “compensation”, for a fiscal year,  
 41 means the total amount of wages, salary, bonuses, and deferred com-

1           pensation for the fiscal year, whether paid, earned, or otherwise accru-  
2           ing, as recorded in an employer’s cost accounting records for the fiscal  
3           year.

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

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

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

11                  (B) whose voting stock is publicly traded.

12           (6) SENIOR EXECUTIVES.—The term “senior executives”, with re-  
13           spect to a contractor, means the 5 most highly compensated employees  
14           in management positions at each home office and each segment of the  
15           contractor.

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

24           **§ 1128. Maintaining necessary capability with respect to ac-**  
25           **quisition of architectural and engineering services**

26           The Administrator, in consultation with the Secretary of Defense, the Ad-  
27           ministrator of General Services, and the Director of the Office of Personnel  
28           Management, shall develop and implement a plan to ensure that the Federal  
29           Government maintains the necessary capability with respect to the acquisi-  
30           tion of architectural and engineering services to—

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

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

34                   (3) establish professional standards;

35                   (4) develop scopes of work; and

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

37           **§ 1129. Center of excellence in contracting for services**

38           The Administrator shall maintain a center of excellence in contracting for  
39           services. The center shall assist the acquisition community by identifying,  
40           and serving as a clearinghouse for, best practices in contracting for services  
41           in the public and private sectors.



1                   nizational level not lower than an Assistant Secretary of De-  
2                   fense within the Office of the Under Secretary of Defense for  
3                   Acquisition, Technology, and Logistics; or

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

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

9                   **§ 1303. Functions and authority**

10                  (a) FUNCTIONS.—

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

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

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

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

27                   (3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in  
28                   consultation with the Council, shall ensure that procurement regula-  
29                   tions prescribed by executive agencies are consistent with the Federal  
30                   Acquisition Regulation and in accordance with the policies prescribed  
31                   pursuant to section 1121(b) of this title.

32                   (4) REQUEST TO REVIEW REGULATION.—

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

37                   (B) PERIOD OF REVIEW.—Unless the request is frivolous or  
38                   does not, on its face, state a valid basis for the review, the Admin-  
39                   istrator shall complete the review not later than 60 days after re-  
40                   ceiving the request. The time for completion of the review may be  
41                   extended if the Administrator determines that an additional period

1 of review is required. The Administrator shall advise the requester  
2 of the reasons for the extension and the date by which the review  
3 will be completed.

4 (5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IM-  
5 PROVED.—If the Administrator determines that a regulation relating to  
6 procurement is inconsistent with the Federal Acquisition Regulation or  
7 that the regulation otherwise should be revised to remove an inconsis-  
8 tency with the policies prescribed under section 1121(b) of this title, the  
9 Administrator shall rescind or deny the promulgation of the regulation  
10 or take other action authorized under sections 1121, 1122(a) to (e)(1),  
11 1125, 1126, 1130, 1131, and 2304 of this title as may be necessary  
12 to remove the inconsistency. If the Administrator determines that the  
13 regulation, although not inconsistent with the Federal Acquisition Reg-  
14 ulation or those policies, should be revised to improve compliance with  
15 the Regulation or policies, the Administrator shall take action author-  
16 ized under sections 1121, 1122(a) to (e)(1), 1125, 1126, 1130, 1131,  
17 and 2304 as may be necessary and appropriate.

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

21 (b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

22 (1) IN GENERAL.—Subject to the authority, direction, and control of  
23 the head of the agency concerned, each official who represents an agen-  
24 cy on the Council pursuant to section 1302(b) of this title shall—

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

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

35 (C) eliminate or reduce—

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

38 (ii) redundant or unnecessary procurement regulations  
39 which are unique to that agency.

40 (2) LIMITATION ON DELEGATION.—The authority to review and ap-  
41 prove or disapprove regulations under paragraph (1)(A) may not be

1 delegated to an individual outside the office of the official who rep-  
 2 represents the agency on the Council pursuant to section 1302(b) of this  
 3 title.

4 (e) GOVERNING POLICIES.—All actions of the Council and of members of  
 5 the Council shall be in accordance with and furtherance of the policies pre-  
 6 scribed under section 1121(b) of this title.

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

11 **§ 1304. Contract clauses and certifications**

12 (a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—  
 13 The Council shall prescribe regulations to discourage the use of a non-  
 14 standard contract clause on a repetitive basis. The regulations shall include  
 15 provisions that—

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

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

21 (b) WHEN CERTIFICATION REQUIRED.—

22 (1) BY LAW.—A provision of law may not be construed as requiring  
 23 a certification by a contractor or offeror in a procurement made or to  
 24 be made by the Federal Government unless that provision of law spe-  
 25 cifically provides that such a certification shall be required.

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

29 (A) the certification requirement is specifically imposed by stat-  
 30 ute; or

31 (B) written justification for the certification requirement is pro-  
 32 vided to the Administrator by the Council and the Administrator  
 33 approves in writing the inclusion of the certification requirement.

34 (3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

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

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

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

3 (ii) written justification for the certification requirement is  
4 provided to the head of the executive agency by the senior  
5 procurement executive of the agency and the head of the execu-  
6 tive agency approves in writing the inclusion of the certifi-  
7 cation requirement.

## 8 SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

### 9 § 1311. Establishment and membership

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

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

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

15 (2) the Administrator;

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

18 (4) the chief acquisition officer of each executive agency that is re-  
19 quired to have a chief acquisition officer under section 1702 of this  
20 title and the senior procurement executive of each military department;  
21 and

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

27 (c) LEADERSHIP AND SUPPORT.—

28 (1) CHAIRMAN.—The Deputy Director for Management of the Office  
29 of Management and Budget is the Chairman of the Council.

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

33 (3) LEADER OF ACTIVITIES.—The Administrator shall lead the ac-  
34 tivities of the Council on behalf of the Deputy Director for Manage-  
35 ment.

36 (4) SUPPORT.—The Administrator of General Services shall provide  
37 administrative and other support for the Council.

### 38 § 1312. Functions

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

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

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

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

7 (3) Assist the Administrator in the identification, development, and  
8 coordination of multiagency projects and other innovative initiatives to  
9 improve Federal acquisition.

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

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

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

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

## 22 **CHAPTER 15—COST ACCOUNTING STANDARDS**

Sec.

1501. Cost Accounting Standards Board.

1502. Cost accounting standards.

1503. Contract price adjustment.

1504. Effect on other standards and regulations.

1505. Examinations.

1506. Authorization of appropriations.

### 23 **§ 1501. Cost Accounting Standards Board**

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

26 (b) MEMBERSHIP.—

27 (1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The  
28 Board consists of 5 members. One member is the Administrator, who  
29 serves as Chairman. The other 4 members, all of whom shall have expe-  
30 rience in Federal Government contract cost accounting, are as follows:

31 (A) 2 representatives of the Federal Government—

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

34 (ii) one of whom is an officer or employee of the General  
35 Services Administration appointed by the Administrator of  
36 General Services.

1 (B) 2 individuals from the private sector, each of whom is ap-  
2 pointed by the Administrator, and—

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

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

6 (2) TERM OF OFFICE.—

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

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

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

20 (e) SENIOR STAFF.—The Administrator, after consultation with the  
21 Board, may—

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

25 (2) pay those employees without regard to the provisions of chapter  
26 51 and subchapter III of chapter 53 of title 5 relating to classification  
27 and General Schedule pay rates, except that those employees may not  
28 receive pay in excess of the maximum rate of basic pay payable under  
29 section 5376 of title 5.

30 (d) OTHER STAFF.—The Administrator may appoint, fix the compensa-  
31 tion of, and remove additional employees of the Board under the applicable  
32 provisions of title 5.

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

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

38 (2) the Administrator, after consultation with the Board, may pro-  
39 cure temporary and intermittent services of personnel under section  
40 3109(b) of title 5.

41 (f) COMPENSATION.—

1 (1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of  
 2 the Board who are officers or employees of the Federal Government,  
 3 and officers and employees of other agencies of the Federal Govern-  
 4 ment who are used under subsection (e)(1), shall not receive additional  
 5 compensation for services but shall continue to be compensated by the  
 6 employing department or agency of the officer or employee.

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

13 (3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual  
 14 hired under subsection (e)(2) may receive compensation at a rate fixed  
 15 by the Administrator, but not to exceed the daily equivalent of the rate  
 16 for level V of the Executive Schedule for each day (including travel  
 17 time) in which the individual is properly engaged in the actual perform-  
 18 ance of duties under this chapter.

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

## 23 § 1502. Cost accounting standards

24 (a) AUTHORITY.—

25 (1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting  
 26 Standards Board has exclusive authority to prescribe, amend, and re-  
 27 scind cost accounting standards, and interpretations of the standards,  
 28 designed to achieve uniformity in the cost accounting standards gov-  
 29 erning measurement, assignment, and allocation of costs to contracts  
 30 with the Federal Government.

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

37 (b) MANDATORY USE OF STANDARDS.—

38 (1) SUBCONTRACT.—

39 (A) DEFINITION.—In this paragraph, the term “subcontract”  
 40 includes a transfer of commercial items between divisions, subsidi-  
 41 aries, or affiliates of a contractor or subcontractor.

1 (B) WHEN STANDARDS ARE TO BE USED.—Cost accounting  
 2 standards prescribed under this chapter are mandatory for use by  
 3 all executive agencies and by contractors and subcontractors in es-  
 4 timating, accumulating, and reporting costs in connection with the  
 5 pricing and administration of, and settlement of disputes con-  
 6 cerning, all negotiated prime contract and subcontract procure-  
 7 ments with the Federal Government in excess of the amount set  
 8 forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is ad-  
 9 justed in accordance with applicable requirements of law.

10 (C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does  
 11 not apply to—

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

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

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

19 (iv) a contract or subcontract with a value of less than  
 20 \$7,500,000 if, when the contract or subcontract is entered  
 21 into, the segment of the contractor or subcontractor that will  
 22 perform the work has not been awarded at least one contract  
 23 or subcontract with a value of more than \$7,500,000 that is  
 24 covered by the standards.

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

26 (A) exempt classes of contractors and subcontractors from the  
 27 requirements of this chapter; and

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

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

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

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

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

40 (B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an execu-  
 41 tive agency may waive the applicability of the cost accounting

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

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

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

- 12 (i) criteria for selecting an official to be delegated authority
- 13 to grant waivers under subparagraph (A) or (B); and
- 14 (ii) the specific circumstances under which the waiver may
- 15 be granted.

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

19 (e) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND IN-  
 20 TERPRETATIONS.—Before prescribing cost accounting standards and inter-  
 21 pretations, the Board shall—

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

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

27 (B) the advantages, disadvantages, and improvements antici-  
 28 pated in the pricing and administration of, and settlement of dis-  
 29 putes concerning, contracts; and

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

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

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

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

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

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

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

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

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

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

24 (2) agree to a contract price adjustment, with interest, for any in-  
25 creased costs the Federal Government pays the contractor or subcon-  
26 tractor because of a change in the contractor's or subcontractor's cost  
27 accounting practices or a failure by the contractor or subcontractor to  
28 comply with applicable cost accounting standards.

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

### 32 **§ 1503. Contract price adjustment**

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

38 (b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken  
39 under section 1502(f)(2) of this title shall be made, where applicable, on  
40 relevant contracts between the Federal Government and the contractor that  
41 are subject to the cost accounting standards so as to protect the Federal

1 Government from payment, in the aggregate, of increased costs, as defined  
 2 by the Cost Accounting Standards Board. The Federal Government may not  
 3 recover costs greater than the aggregate increased cost to the Federal Gov-  
 4 ernment on the relevant contracts subject to the price adjustment unless the  
 5 contractor made a change in its cost accounting practices of which it was  
 6 aware or should have been aware at the time of the price negotiation and  
 7 which it failed to disclose to the Federal Government.

8 (e) INTEREST.—The interest rate applicable to a contract price adjust-  
 9 ment is the annual rate of interest established under section 6621 of the  
 10 Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest  
 11 accrues from the time payments of the increased costs were made to the  
 12 contractor or subcontractor to the time the Federal Government receives full  
 13 compensation for the price adjustment.

14 **§ 1504. Effect on other standards and regulations**

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

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

21 (2) are subject to the provisions of this part in the same manner as  
 22 if prescribed by the Board under this part.

23 (b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation  
 24 or proposed regulation of an executive agency is not inconsistent with a cost  
 25 accounting standard prescribed or amended under this chapter, the Admin-  
 26 istrator, under the authority in sections 1121, 1122(a) to (c)(1), 1125,  
 27 1126, 1130, 1131, and 2304 of this title, shall rescind or deny the promul-  
 28 gation of the inconsistent regulation or proposed regulation and take other  
 29 appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125,  
 30 1126, 1130, 1131, and 2304.

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

36 **§ 1505. Examinations**

37 To determine whether a contractor or subcontractor has complied with  
 38 cost accounting standards prescribed under this chapter and has followed  
 39 consistently the contractor's or subcontractor's disclosed cost accounting  
 40 practices, an authorized representative of the head of the agency concerned,  
 41 of the offices of inspector general established under the Inspector General

1 Act of 1978 (5 App. U.S.C.), or of the Comptroller General shall have the  
 2 right to examine and copy documents, papers, or records of the contractor  
 3 or subcontractor relating to compliance with the standards.

4 **§ 1506. Authorization of appropriations**

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

6 **CHAPTER 17—AGENCY RESPONSIBILITIES AND**  
 7 **PROCEDURES**

Sec.

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

8 **§ 1701. Cooperation with the Administrator**

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

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

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

17 **§ 1702. Chief Acquisition Officers and senior procurement**  
 18 **executives**

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

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

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

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

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

1 (A) monitoring the performance of acquisition activities and ac-  
2 quisition programs of the executive agency, evaluating the per-  
3 formance of those programs on the basis of applicable performance  
4 measurements, and advising the head of the executive agency re-  
5 garding the appropriate business strategy to achieve the mission  
6 of the executive agency;

7 (B) increasing the use of full and open competition in the acqui-  
8 sition of property and services by the executive agency by estab-  
9 lishing policies, procedures, and practices that ensure that the ex-  
10 ecutive agency receives a sufficient number of sealed bids or com-  
11 petitive proposals from responsible sources to fulfill the Federal  
12 Government's requirements (including performance and delivery  
13 schedules) at the lowest cost or best value considering the nature  
14 of the property or service procured;

15 (C) increasing appropriate use of performance-based contracting  
16 and performance specifications;

17 (D) making acquisition decisions consistent with all applicable  
18 laws and establishing clear lines of authority, accountability, and  
19 responsibility for acquisition decisionmaking within the executive  
20 agency;

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

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

27 (G) as part of the strategic planning and performance evalua-  
28 tion process required under section 306 of title 5 and sections  
29 1105(a)(28), 1115, 1116, and 9703 of title 31—

30 (i) assessing the requirements established for agency per-  
31 sonnel regarding knowledge and skill in acquisition resources  
32 management and the adequacy of those requirements for fa-  
33 cilitating the achievement of the performance goals estab-  
34 lished for acquisition management;

35 (ii) developing strategies and specific plans for hiring,  
36 training, and professional development to rectify a deficiency  
37 in meeting those requirements; and

38 (iii) reporting to the head of the executive agency on the  
39 progress made in improving acquisition management capa-  
40 bility.

41 (e) SENIOR PROCUREMENT EXECUTIVE.—

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

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

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

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

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

16 **§ 1703. Acquisition workforce**

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

20 (b) APPLICABILITY.—

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

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

26 (c) MANAGEMENT POLICIES.—

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

28 (A) ESTABLISH POLICIES AND PROCEDURES.—After consulta-  
29 tion with the Administrator, the head of each executive agency  
30 shall establish policies and procedures for the effective manage-  
31 ment (including accession, education, training, career development,  
32 and performance incentives) of the acquisition workforce of the  
33 agency. The development of acquisition workforce policies under  
34 this section shall be carried out consistent with the merit system  
35 principles set forth in section 2301(b) of title 5.

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

40 (2) DUTIES OF ADMINISTRATOR.—The Administrator shall issue  
41 policies to promote uniform implementation of this section by executive

1 agencies, with due regard for differences in program requirements  
2 among agencies that may be appropriate and warranted in view of the  
3 agency mission. The Administrator shall coordinate with the Deputy  
4 Director for Management of the Office of Management and Budget to  
5 ensure that the policies are consistent with the policies and procedures  
6 established, and enhanced system of incentives provided, pursuant to  
7 section 5051(e) of the Federal Acquisition Streamlining Act of 1994  
8 (Public Law 103–355, 108 Stat. 3351). The Administrator shall evalu-  
9 ate the implementation of this section by executive agencies.

10 (d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXEC-  
11 UTIVE.—Subject to the authority, direction, and control of the head of an  
12 executive agency, the senior procurement executive of the agency shall carry  
13 out all powers, functions, and duties of the head of the agency with respect  
14 to implementing this section. The senior procurement executive shall ensure  
15 that the policies of the head of the executive agency established in accord-  
16 ance with this section are implemented throughout the agency.

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

23 (f) CAREER DEVELOPMENT.—

24 (1) CAREER PATHS.—

25 (A) IDENTIFICATION.—The head of each executive agency shall  
26 ensure that appropriate career paths for personnel who desire to  
27 pursue careers in acquisition are identified in terms of the edu-  
28 cation, training, experience, and assignments necessary for career  
29 progression to the most senior acquisition positions. The head of  
30 each executive agency shall make available information on those  
31 career paths.

32 (B) CRITICAL DUTIES AND TASKS.—For each career path, the  
33 head of each executive agency shall identify the critical acquisition-  
34 related duties and tasks in which, at minimum, employees of the  
35 agency in the career path shall be competent to perform at full  
36 performance grade levels. For this purpose, the head of the execu-  
37 tive agency shall provide appropriate coverage of the critical duties  
38 and tasks identified by the Director of the Federal Acquisition In-  
39 stitute.

40 (C) MANDATORY TRAINING AND EDUCATION.—For each career  
41 path, the head of each executive agency shall establish require-

1           ments for the completion of course work and related on-the-job  
 2           training in the critical acquisition-related duties and tasks of the  
 3           career path. The head of each executive agency also shall encour-  
 4           age employees to maintain the currency of their acquisition knowl-  
 5           edge and generally enhance their knowledge of related acquisition  
 6           management disciplines through academic programs and other  
 7           self-developmental activities.

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

13           (A) relate pay to performance (including the extent to which the  
 14           performance of personnel in the workforce contributes to achieving  
 15           the cost goals, schedule goals, and performance goals established  
 16           for acquisition programs pursuant to section 3103(b) of this title);  
 17           and

18           (B) provide for consideration, in personnel evaluations and pro-  
 19           motion decisions, of the extent to which the performance of per-  
 20           sonnel in the workforce contributes to achieving the cost goals,  
 21           schedule goals, and performance goals.

22          (g) QUALIFICATION REQUIREMENTS.—

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

25           (A) establish qualification requirements, including education re-  
 26           quirements, for—

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

29           (ii) senior positions in the General Schedule Contracting  
 30           series (GS–1102);

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

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

35           (B) prescribe the manner and extent to which the qualification  
 36           requirements shall apply to an individual serving in a position de-  
 37           scribed in subparagraph (A) at the time the requirements are es-  
 38           tablished.

39          (2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE AC-  
 40          QUISITION WORKFORCE.—The Administrator shall establish qualifica-  
 41          tion requirements and make prescriptions under paragraph (1) that are

1 comparable to those established for the same or equivalent positions  
2 pursuant to chapter 87 of title 10 with appropriate modifications.

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

9 (h) EDUCATION AND TRAINING.—

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

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

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

22 (i) TRAINING FUND.—

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

25 (A) adapts to fundamental changes in the nature of Federal  
26 Government acquisition of property and services associated with  
27 the changing roles of the Federal Government; and

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

31 (2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an ac-  
32 quisition workforce training fund. The Administrator of General Serv-  
33 ices shall manage the fund through the Federal Acquisition Institute  
34 to support the training of the acquisition workforce of the executive  
35 agencies, except as provided in paragraph (5). The Administrator of  
36 General Services shall consult with the Administrator in managing the  
37 fund.

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

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

3 (B) Government-wide contracts for the acquisition of informa-  
4 tion technology as defined in section 11101 of title 40 and multi-  
5 agency acquisition contracts for that technology authorized by sec-  
6 tion 11314 of title 40.

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

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

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

19 (6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Ad-  
20 ministrator of General Services, through the Office of Federal  
21 Procurement Policy, shall ensure that amounts collected for training  
22 under this subsection are not used for a purpose other than the pur-  
23 pose specified in paragraph (2).

24 (7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDU-  
25 CATION AND TRAINING.—Amounts credited to the fund are in addition  
26 to amounts requested and appropriated for education and training re-  
27 ferred to in subsection (h)(1).

28 (8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund re-  
29 main available to be expended only in the fiscal year for which they  
30 are credited and the 2 succeeding fiscal years.

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

33 (j) RECRUITMENT PROGRAM.—

34 (1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections  
35 3304, 5333, and 5753 of title 5, the head of a department or agency  
36 of the Federal Government (other than the Secretary of Defense) may  
37 determine, under regulations prescribed by the Office of Personnel  
38 Management, that certain Federal acquisition positions (as described in  
39 subsection (g)(1)(A)) are shortage category positions in order to use  
40 the authorities in those sections to recruit and appoint highly qualified  
41 individuals directly to those positions in the department or agency.

1 (2) REPORT.—Not later than March 31, 2007, the Director of the  
 2 Office of Personnel Management, in consultation with the Adminis-  
 3 trator, shall submit to Congress a report on the implementation of this  
 4 subsection. The report shall include—

5 (A) a list of the departments and agencies that exercised the au-  
 6 thority provided in this subsection and whether the exercise of the  
 7 authority was carried out in accordance with the regulations of the  
 8 Office of Personnel Management;

9 (B) the Director’s assessment of the efficacy of the exercise of  
 10 the authority provided in this subsection in attracting employees  
 11 with unusually high qualifications to the acquisition workforce;  
 12 and

13 (C) recommendations the Director considers appropriate on  
 14 whether the authority to carry out the program should be ex-  
 15 tended.

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

19 **§ 1704. Advocates for competition**

20 (a) ESTABLISHMENT AND DESIGNATION.—

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

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

24 (A) designate for the executive agency and for each procuring  
 25 activity of the executive agency one officer or employee serving in  
 26 a position authorized for the executive agency on July 18, 1984  
 27 (other than the senior procurement executive designated pursuant  
 28 to section 1702(e) of this title) to serve as the advocate for com-  
 29 petition;

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

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

39 (b) DUTIES AND FUNCTIONS.—The advocate for competition of an execu-  
 40 tive agency shall—

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

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

5 (3) identify and report to the senior procurement executive of the ex-  
 6 ecutive agency—

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

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

13 (4) prepare and transmit to the senior procurement executive an an-  
 14 nual report describing—

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

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

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

18 (5) recommend to the senior procurement executive—

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

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

25 (6) describe other ways in which the executive agency has empha-  
 26 sized competition in programs for procurement training and research.

27 (c) RESPONSIBILITIES.—The advocate for competition for each procuring  
 28 activity is responsible for promoting full and open competition, promoting  
 29 the acquisition of commercial items, and challenging barriers to acquisition,  
 30 including unnecessarily restrictive statements of need, unnecessarily detailed  
 31 specifications, and unnecessarily burdensome contract clauses.

### 32 **§ 1705. Personnel evaluation**

33 The head of each executive agency subject to part C shall ensure, with  
 34 respect to the employees of that agency whose primary duties and respon-  
 35 sibilities pertain to the award of contracts subject to the provisions of the  
 36 Small Business and Federal Procurement Competition Enhancement Act of  
 37 1984 (Public Law 98-577, 98 Stat. 3066), that the performance appraisal  
 38 system applicable to those employees affords appropriate recognition to,  
 39 among other factors, efforts to—

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

4 (2) further the purposes of the Small Business and Federal Procure-  
 5 ment Competition Enhancement Act of 1984 (Public Law 98–577, 98  
 6 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public  
 7 Law 98–525, title XII, 98 Stat. 2588); and

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

10 **§ 1706. Publication of proposed regulations**

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

12 (1) REQUIRED COMMENT PERIOD.—Except as provided in subsection  
 13 (d), a procurement policy, regulation, procedure, or form (including an  
 14 amendment or modification thereto) may not take effect until 60 days  
 15 after it is published for public comment in the Federal Register pursu-  
 16 ant to subsection (b) if it—

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

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

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

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

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

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

36 (1) the text of the proposal or, if it is impracticable to publish the  
 37 full text of the proposal, a summary of the proposal and a statement  
 38 specifying the name, address, and telephone number of the officer or  
 39 employee of the executive agency from whom the full text may be ob-  
 40 tained; and

1           (2) a request for interested parties to submit comments on the pro-  
2           posal and the name and address of the officer or employee of the Fed-  
3           eral Government designated to receive the comments.

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

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

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

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

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

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

21   **§ 1707. Procurement notice**

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

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

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

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

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

34           (3) an executive agency awarding a contract for property or services  
35           for a price exceeding \$25,000, or placing an order exceeding \$25,000  
36           under a basic agreement, basic ordering agreement, or similar arrange-  
37           ment, shall furnish for publication a notice announcing the award or  
38           order if there is likely to be a subcontract under the contract or order.

39          (b) EXEMPTIONS.—

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

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

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

7 (ii) permitting the public to respond to the solicitation elec-  
 8 tronically;

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

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

13 (i) an unsolicited proposal that demonstrates a unique and  
 14 innovative research concept and publication of a notice of the  
 15 unsolicited research proposal would disclose the originality of  
 16 thought or innovativeness of the proposal or would disclose  
 17 proprietary information associated with the proposal; or

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

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

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

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

26 (G) the procurement is for the services of an expert for use in  
 27 any litigation or dispute (including any reasonably foreseeable liti-  
 28 gation or dispute) involving the Federal Government in a trial,  
 29 hearing, or proceeding before a court, administrative tribunal, or  
 30 agency, or in any part of an alternative dispute resolution process,  
 31 whether or not the expert is expected to testify; or

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

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

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

40 (B) for which the head of the executive agency makes a deter-  
 41 mination in writing, after consultation with the Administrator and

1           the Administrator of the Small Business Administration, that it is  
2           not appropriate or reasonable to publish a notice before issuing a  
3           solicitation.

4           (3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREE-  
5           MENTS.—Paragraph (1)(A) shall be implemented in a manner con-  
6           sistent with applicable international agreements.

7           (e) CONTENTS OF NOTICE.—Each notice of solicitation required by para-  
8           graph (1) or (2) of subsection (a) shall include—

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

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

12           (B) shall include, as appropriate, the agency nomenclature, Na-  
13           tional Stock Number or other part number, and a brief description  
14           of the item’s form, fit, or function, physical dimensions, predomi-  
15           nant material of manufacture, or similar information that will as-  
16           sist a prospective contractor to make an informed business judg-  
17           ment as to whether a copy of the solicitation should be requested;

18          (2) provisions that—

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

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

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

26           (ii) if so, identify the office from which the qualification require-  
27           ment may be obtained;

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

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

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

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

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

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

4 (d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR  
 5 ORDER.—A notice of solicitation, award, or order required to be published  
 6 under subsection (a) shall be published by electronic means. The notice  
 7 must be electronically accessible in a form that allows convenient and uni-  
 8 versal user access through the single Government-wide point of entry des-  
 9 ignated in the Federal Acquisition Regulation.

10 (e) TIME LIMITATIONS.—

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

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

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

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

24 (ii) in the case of an order under a basic agreement, basic  
 25 ordering agreement, or similar arrangement, is earlier than  
 26 30 days after the date the notice required for an order de-  
 27 scribed in subsection (a)(2)(B) is published; or

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

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

36 (3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regu-  
 37 lations defining limited circumstances in which flexible deadlines can be  
 38 used under paragraph (1) for the issuance of solicitations and the sub-  
 39 mission of bids or proposals for the procurement of commercial items.

40 (f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An exec-  
 41 utive agency intending to solicit offers for a contract for which a notice of

1 solicitation is required to be posted under subsection (a)(1) shall ensure that  
 2 contracting officers consider each responsive offer timely received from an  
 3 offeror.

4 (g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT  
 5 OF FEE.—An executive agency shall make available to a business concern,  
 6 or the authorized representative of a concern, the complete solicitation pack-  
 7 age for any on-going procurement announced pursuant to a notice of solici-  
 8 tation under subsection (a). An executive agency may require the payment  
 9 of a fee, not exceeding the actual cost of duplication, for a copy of the pack-  
 10 age.

11 **§ 1708. Contracting functions performed by Federal per-**  
 12 **sonnel**

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

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

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

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

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

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

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

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

36 **§ 1709. Value engineering**

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

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

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

3 **§ 1710. Record requirements**

4 (a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall  
5 establish and maintain for 5 years a computer file, by fiscal year, containing  
6 unclassified records of all procurements greater than the simplified acquisi-  
7 tion threshold in that fiscal year.

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

10 (1) competitive procedures—

11 (A) the date of contract award;

12 (B) information identifying the source to whom the contract was  
13 awarded;

14 (C) the property or services the Federal Government obtains  
15 under the procurement; and

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

17 (2) procedures other than competitive procedures—

18 (A) the information described in paragraph (1);

19 (B) the reason under section 3303(a) of this title or section  
20 2304(e) of title 10 for using the procedures; and

21 (C) the identity of the organization or activity that conducted  
22 the procurement.

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

30 (d) TRANSMISSION AND DATA SYSTEM ENTRY OF INFORMATION.—Infor-  
31 mation included in the record established and maintained under subsection  
32 (a) shall be transmitted to the Administrator of General Services and shall  
33 be entered in the Federal Procurement Data System referred to in section  
34 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  
38 “qualified HUBZone small business concern” has the meaning given  
39 that term in section 3(p) of the Small Business Act (15 U.S.C.  
40 632(p)).

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

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

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

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

Sec.

1901. Simplified acquisition procedures.

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

1903. Special emergency procurement authority.

1904. Certain transactions for defense against attack.

1905. List of laws inapplicable to contracts or subcontracts not greater than simplified ac-  
 sition threshold.

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

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

1908. Inflation adjustment of acquisition-related dollar thresholds.

### 21 **§ 1901. Simplified acquisition procedures**

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

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

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

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

1 (e) PROMOTION OF COMPETITION REQUIRED.—When using simplified ac-  
 2 quisition procedures, the head of an executive agency shall promote competi-  
 3 tion to the maximum extent practicable.

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

8 (e) REPORT.—Until October 1, 2004, procuring activities shall continue  
 9 to report under section 1710(d) of this title procurement awards of at least  
 10 \$25,000, but less than \$100,000, in conformity with the procedures for the  
 11 reporting of a contract award greater than \$25,000 that were in effect on  
 12 October 1, 1992.

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

16 (1) shall publish a notice in accordance with section 1707 of this title  
 17 and, as provided in section 1707(c)(4) of this title, permit all respon-  
 18 sible sources to submit a bid, proposal, or quotation (as appropriate)  
 19 that the agency shall consider;

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

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

27 **§ 1902. Procedures applicable to purchases below micro-pur-**  
 28 **chase threshold**

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

31 (b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICA-  
 32 BILITY OF CERTAIN AUTHORITY.—

33 (1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each  
 34 executive agency shall ensure that procuring activities of that agency,  
 35 when awarding a contract with a price exceeding the micro-purchase  
 36 threshold, comply with the requirements of section 8(a) of the Small  
 37 Business Act (15 U.S.C. 637(a)), section 2323 of title 10, and section  
 38 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law  
 39 103–355, 15 U.S.C. 644 note).

40 (2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority  
 41 under part 13.106(a)(1) of the Federal Acquisition Regulation (48

1 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make pur-  
 2 chases without securing competitive quotations does not apply to a pur-  
 3 chase with a price exceeding the micro-purchase threshold.

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

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

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

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

18 **§ 1903. Special emergency procurement authority**

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

23 (1) in support of a contingency operation (as defined in section  
 24 101(a) of title 10); or

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

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

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

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

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

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

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

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

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

4 (e) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL  
 5 ITEM.—

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

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

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

16 (B) cost or pricing data requirements (commonly referred to as  
 17 truth in negotiating) under chapter 35 of this title and section  
 18 2306a of title 10.

19 **§ 1904. Certain transactions for defense against attack**

20 (a) AUTHORITY.—

21 (1) IN GENERAL.—The head of an executive agency that engages in  
 22 basic research, applied research, advanced research, and development  
 23 projects that are necessary to the responsibilities of the executive agen-  
 24 cy in the field of research and development and have the potential to  
 25 facilitate defense against or recovery from terrorism or nuclear, biologi-  
 26 cal, chemical, or radiological attack may exercise the same authority  
 27 (subject to the same restrictions and conditions) with respect to the re-  
 28 search and projects as the Secretary of Defense may exercise under  
 29 section 2371 of title 10, except for subsections (b) and (f) of section  
 30 2371.

31 (2) PROTOTYPE PROJECTS.—The head of an executive agency, under  
 32 the authority of paragraph (1), may carry out prototype projects that  
 33 meet the requirements of paragraph (1) in accordance with the require-  
 34 ments and conditions provided for carrying out prototype projects  
 35 under section 845 of the National Defense Authorization Act for Fiscal  
 36 Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), including  
 37 that, to the maximum extent practicable, competitive procedures shall  
 38 be used when entering into agreements to carry out projects under sec-  
 39 tion 845(a) of that Act and that the period of authority to carry out  
 40 projects under section 845(a) of that Act terminates as provided in sec-  
 41 tion 845(g) of that Act.



1 included on the list inapplicable to contracts and subcontracts in  
2 amounts not greater than the simplified acquisition threshold.

3 (2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law  
4 described in subsection (c) that is enacted after October 13, 1994, shall  
5 be included on the list of inapplicable provisions of laws required by  
6 paragraph (1) unless the Council makes a written determination that  
7 it would not be in the best interest of the Federal Government to ex-  
8 empt contracts or subcontracts in amounts not greater than the sim-  
9 plified acquisition threshold from the applicability of the provision.

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

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

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

18 (d) PETITION.—A person may petition the Administrator to take appro-  
19 priate action when a provision of law described in subsection (c) is not in-  
20 cluded on the list of inapplicable provisions of law as required by subsection  
21 (b) and the Council has not made a written determination pursuant to sub-  
22 section (b)(2). The Administrator shall revise the Federal Acquisition Regu-  
23 lation to include the provision on the list of inapplicable provisions of law  
24 unless the Council makes a determination pursuant to subsection (b)(2)  
25 within 60 days after the petition is received.

26 **§ 1906. List of laws inapplicable to procurements of commer-**  
27 **cial items**

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

30 (b) CONTRACTS.—

31 (1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Fed-  
32 eral Acquisition Regulation shall include a list of provisions of law that  
33 are inapplicable to contracts for the procurement of commercial items.  
34 A provision of law properly included on the list pursuant to paragraph  
35 (2) does not apply to purchases of commercial items by an executive  
36 agency. This section does not render a provision of law not included  
37 on the list inapplicable to contracts for the procurement of commercial  
38 items.

39 (2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law  
40 described in subsection (d) that is enacted after October 13, 1994,  
41 shall be included on the list of inapplicable provisions of law required

1 by paragraph (1) unless the Council makes a written determination  
2 that it would not be in the best interest of the Federal Government  
3 to exempt contracts for the procurement of commercial items from the  
4 applicability of the provision.

5 (e) SUBCONTRACTS.—

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

9 (2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Fed-  
10 eral Acquisition Regulation shall include a list of provisions of law that  
11 are inapplicable to subcontracts under a contract or subcontract for the  
12 procurement of commercial items. A provision of law properly included  
13 on the list pursuant to paragraph (3) does not apply to those sub-  
14 contracts. This section does not render a provision of law not included  
15 on the list inapplicable to subcontracts under a contract for the pro-  
16 curement of commercial items.

17 (3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law  
18 described in subsection (d) shall be included on the list of inapplicable  
19 provisions of law required by paragraph (2) unless the Council makes  
20 a written determination that it would not be in the best interest of the  
21 Federal Government to exempt subcontracts under a contract for the  
22 procurement of commercial items from the applicability of the provi-  
23 sion.

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

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

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

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

37 (e) PETITION.—A person may petition the Administrator to take appro-  
38 priate action when a provision of law described in subsection (d) is not in-  
39 cluded on the list of inapplicable provisions of law as required by subsection  
40 (b) or (c) and the Council has not made a written determination pursuant  
41 to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal

1 Acquisition Regulation to include the provision on the list of inapplicable  
 2 provisions of law unless the Council makes a determination pursuant to sub-  
 3 section (b)(2) or (c)(3) within 60 days after the petition is received.

4 **§ 1907. List of laws inapplicable to procurements of commer-**  
 5 **cially available off-the-shelf items**

6 (a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

7 (1) IN GENERAL.—The Federal Acquisition Regulation shall include  
 8 a list of provisions of law that are inapplicable to contracts for the pro-  
 9 curement of commercially available off-the-shelf items. A provision of  
 10 law properly included on the list pursuant to paragraph (2) does not  
 11 apply to contracts for the procurement of commercially available off-  
 12 the-shelf items. This section does not render a provision of law not in-  
 13 cluded on the list inapplicable to contracts for the procurement of com-  
 14 mercially available off-the-shelf items.

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

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

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

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

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

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

28 (iii) sections 3706 and 3707 of this title.

29 (b) COVERED LAW.—Except as provided in subsection (a)(3), a provision  
 30 of law referred to in subsection (a)(1) is a provision of law that the Admin-  
 31 istrator determines imposes Federal Government-unique policies, proce-  
 32 dures, requirements, or restrictions for the procurement of property or serv-  
 33 ices on persons whom the Federal Government has awarded contracts for  
 34 the procurement of commercially available off-the-shelf items, except for a  
 35 provision of law that—

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

37 (2) specifically refers to this section and provides that, notwith-  
 38 standing this section, it shall be applicable to contracts for the procure-  
 39 ment of commercially available off-the-shelf items.

1    **§ 1908. Inflation adjustment of acquisition-related dollar**  
2                    **thresholds**

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

5           (b) APPLICATION.—

6               (1) IN GENERAL.—Except as provided in paragraph (2), the require-  
7 ment for adjustment under subsection (c) applies to a dollar threshold  
8 that is specified in law as a factor in defining the scope of the applica-  
9 bility of a policy, procedure, requirement, or restriction provided in that  
10 law to the procurement of property or services by an executive agency,  
11 as the Council determines.

12               (2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresh-  
13 olds—

14                   (A) in chapter 67 of this title;

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

16                   (C) the United States Trade Representative establishes pursu-  
17 ant to title III of the Trade Agreements Act of 1979 (19 U.S.C.  
18 2511 et seq.).

19               (3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORI-  
20 TIES.—This section supersedes the applicability of other provisions of  
21 law that provide for the adjustment of a dollar threshold that is adjust-  
22 able under this section.

23           (c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

24               (1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of para-  
25 graph (2), the baseline constant dollar value for a dollar threshold—

26                   (A) in effect on October 1, 2000, that was first specified in a  
27 law that took effect on or before October 1, 2000, is the October  
28 1, 2000, constant dollar value of that dollar threshold; and

29                   (B) specified in a law that takes effect after October 1, 2000,  
30 is the constant dollar value of that threshold as of the effective  
31 date of that dollar threshold pursuant to that law.

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

36               (3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjust-  
37 able under this section shall be adjusted only as provided in this sec-  
38 tion.

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

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

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

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

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

8 (B) not less than \$10,000, but less than \$100,000, to the near-  
9 est \$5,000;

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

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

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

14 (1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may re-  
15 quest adjustment of a dollar threshold adjustable under this section  
16 that is not included in a notice of adjustment published under sub-  
17 section (d) by submitting a petition for adjustment to the Adminis-  
18 trator.

19 (2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for ad-  
20 justment of a dollar threshold under paragraph (1), the Adminis-  
21 trator—

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

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

28 (3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjust-  
29 ment of a dollar threshold pursuant to a petition under this subsection  
30 takes effect on the date the revised notice adding the adjustment under  
31 paragraph (2)(B) is published.

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

Sec.

2101. Definitions.

2102. Prohibitions on disclosing and obtaining procurement information.

2103. Actions required of procurement officers when contacted regarding non-Federal em-  
ployment.

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

2105. Penalties and administrative actions.

2106. Reporting information believed to constitute evidence of offense.

2107. Savings provisions.

34 **§ 2101. Definitions**

35 In this chapter:

1 (1) CONTRACTING OFFICER.—The term “contracting officer” means  
2 an individual who, by appointment in accordance with applicable regu-  
3 lations, has the authority to enter into a Federal agency procurement  
4 contract on behalf of the Government and to make determinations and  
5 findings with respect to the contract.

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

12 (A) Cost or pricing data (as defined in section 2306a(h) of title  
13 10 with respect to procurements subject to that section and sec-  
14 tion 3501 of this title with respect to procurements subject to that  
15 section).

16 (B) Indirect costs and direct labor rates.

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

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

23 (3) FEDERAL AGENCY.—The term “Federal agency” has the mean-  
24 ing given that term in section 102 of title 40.

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

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

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

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

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

35 (6) PROTEST.—The term “protest” means a written objection by an  
36 interested party to the award or proposed award of a Federal agency  
37 procurement contract, pursuant to subchapter V of chapter 35 of title  
38 31.

39 (7) SOURCE SELECTION INFORMATION.—The term “source selection  
40 information” means any of the following information prepared for use  
41 by a Federal agency to evaluate a bid or proposal to enter into a Fed-

1 eral agency procurement contract, if that information previously has  
2 not been made available to the public or disclosed publicly:

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

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

8 (C) Source selection plans.

9 (D) Technical evaluation plans.

10 (E) Technical evaluations of proposals.

11 (F) Cost or price evaluations of proposals.

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

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

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

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

23 **§ 2102. Prohibitions on disclosing and obtaining procure-**  
24 **ment information**

25 (a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

26 (1) IN GENERAL.—Except as provided by law, a person described in  
27 paragraph (3) shall not knowingly disclose contractor bid or proposal  
28 information or source selection information before the award of a Fed-  
29 eral agency procurement contract to which the information relates.

30 (2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to  
31 the restriction in paragraph (1), an employee of a private sector organi-  
32 zation assigned to an agency under chapter 37 of title 5 shall not  
33 knowingly disclose contractor bid or proposal information or source se-  
34 lection information during the 3-year period after the employee’s as-  
35 signment ends, except as provided by law.

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

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

38 or

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

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

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

8 **§ 2103. Actions required of procurement officers when con-**  
 9 **tacted regarding non-Federal employment**

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

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

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

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

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

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

29 (b) RETENTION OF REPORTS.—The agency shall retain each report re-  
 30 quired by this section for not less than 2 years following the submission of  
 31 the report. The reports shall be made available to the public on request, ex-  
 32 cept that any part of a report that is exempt from the disclosure require-  
 33 ments of section 552(b)(1) of title 5 may be withheld from disclosure to the  
 34 public.

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

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

39 (2) A bidder or offeror that engages in employment discussions with  
 40 an official who is subject to the restrictions of this section, knowing

1 that the official has not complied with paragraph (1) or (2) of sub-  
2 section (a).

3 **§ 2104. Prohibition on former official's acceptance of com-**  
4 **penensation from contractor**

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

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

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

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

18 (A) award a contract, subcontract, modification of a contract or  
19 subcontract, or a task order or delivery order in excess of  
20 \$10,000,000 to that contractor;

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

24 (C) approve issuance of one or more contract payments in ex-  
25 cess of \$10,000,000 to that contractor; or

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

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

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

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

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

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

6 **§ 2105. Penalties and administrative actions**

7 (a) CRIMINAL PENALTIES.—A person that violates section 2102 of this  
8 title to exchange information covered by section 2102 of this title for any-  
9 thing of value or to obtain or give a person a competitive advantage in the  
10 award of a Federal agency procurement contract shall be fined under title  
11 18, imprisoned for not more than 5 years, or both.

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

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

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

24 (c) ADMINISTRATIVE ACTIONS.—

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

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

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

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

34 or

35 (ii) the head of the agency that awarded the contract has  
36 determined, based on a preponderance of the evidence, that  
37 the contractor or a person acting for the contractor has en-  
38 gaged in conduct constituting the offense.

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

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

4 (2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Fed-  
 5 eral agency rescinds a contract pursuant to paragraph (1)(B), the Fed-  
 6 eral Government is entitled to recover, in addition to any penalty pre-  
 7 scribed by law, the amount expended under the contract.

8 (3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For pur-  
 9 poses of a suspension or debarment proceeding initiated pursuant to  
 10 paragraph (1)(C), engaging in conduct constituting an offense under  
 11 section 2102, 2103, or 2104 of this title affects the present responsi-  
 12 bility of a Federal Government contractor or subcontractor.

13 **§ 2106. Reporting information believed to constitute evi-**  
 14 **dence of offense**

15 A person may not file a protest against the award or proposed award of  
 16 a Federal agency procurement contract alleging a violation of section 2102,  
 17 2103, or 2104 of this title, and the Comptroller General may not consider  
 18 that allegation in deciding a protest, unless the person, no later than 14  
 19 days after the person first discovered the possible violation, reported to the  
 20 Federal agency responsible for the procurement the information that the  
 21 person believed constitutes evidence of the offense.

22 **§ 2107. Savings provisions**

23 This chapter does not—

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

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

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

33 (4) prohibit individual meetings between a Federal agency official  
 34 and an offeror or potential offeror for, or a recipient of, a contract or  
 35 subcontract under a Federal agency procurement, provided that unau-  
 36 thorized disclosure or receipt of contractor bid or proposal information  
 37 or source selection information does not occur;

38 (5) authorize the withholding of information from, nor restrict its re-  
 39 ceipt by, Congress, a committee or subcommittee of Congress, the  
 40 Comptroller General, a Federal agency, or an inspector general of a  
 41 Federal agency;

1 (6) authorize the withholding of information from, nor restrict its re-  
 2 ceipt by, the Comptroller General in the course of a protest against the  
 3 award or proposed award of a Federal agency procurement contract;  
 4 or

5 (7) limit the applicability of a requirement, sanction, contract pen-  
 6 alty, or remedy established under another law or regulation.

7 **CHAPTER 23—MISCELLANEOUS**

Sec.

- 2301. Use of electronic commerce in Federal procurement.
- 2302. Rights in technical data.
- 2303. Conflict of interest standards for consultants.
- 2304. Authority of Director of Office of Management and Budget not affected.
- 2305. Openness of meetings.
- 2306. Comptroller General's access to information.
- 2307. Modular contracting for information technology.
- 2308. Protection of constitutional rights of contractors.
- 2309. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items.

8 **§ 2301. Use of electronic commerce in Federal procurement**

9 (a) DEFINITION.—For the purposes of this section, the term “electronic  
 10 commerce” means electronic techniques for accomplishing business trans-  
 11 actions, including electronic mail or messaging, World Wide Web technology,  
 12 electronic bulletin boards, purchase cards, electronic funds transfers, and  
 13 electronic data interchange.

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

20 (c) APPLICABLE STANDARDS.—In conducting electronic commerce, the  
 21 head of an executive agency shall apply nationally and internationally recog-  
 22 nized standards that broaden interoperability and ease the electronic inter-  
 23 change of information.

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

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

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

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

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

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

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

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

18 (3) consult with the heads of appropriate Federal agencies with ap-  
 19 plicable technical and functional expertise, including the Office of In-  
 20 formation and Regulatory Affairs, the National Institute of Standards  
 21 and Technology, the General Services Administration, and the Depart-  
 22 ment of Defense.

23 **§ 2302. Rights in technical data**

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

27 (b) GENERAL EXTENT OF REGULATIONS.—

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

32 (2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOV-  
 33 ERNMENT.—With respect to executive agencies subject to part C, regu-  
 34 lations prescribed under subsection (a) shall provide that the Federal  
 35 Government may not require a person that has developed a product or  
 36 process offered or to be offered for sale to the public, as a condition  
 37 for the Federal Government to procure the product or process, to pro-  
 38 vide to the Federal Government technical data relating to the design,  
 39 development, or manufacture of the product or process. This paragraph  
 40 does not apply to data that may be necessary for the Federal Govern-  
 41 ment to operate and maintain the product or use the process if the

1 Federal Government obtains it as an element of performance under the  
2 contract.

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

4 (1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise ex-  
5 pressly provided by Federal statute, with respect to executive agencies  
6 subject to part C, regulations prescribed under subsection (a) shall pro-  
7 vide that—

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

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

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

16 (B) the Federal Government and each agency of the Federal  
17 Government has an unrestricted, royalty-free right to use, or to  
18 have its contractors use, for governmental purposes (excluding  
19 publication outside the Federal Government) technical data devel-  
20 oped exclusively with Federal funds.

21 (2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOV-  
22 ERNMENT.—The requirements of paragraph (1) are in addition to and  
23 not in lieu of any other rights the Federal Government may have pur-  
24 suant to law.

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

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

30 (A) exclusively with Federal funds;

31 (B) exclusively at private expense; or

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

33 (2) The statement of congressional policy and objectives in section  
34 200 of title 35, the statement of purposes in section 2(b) of the Small  
35 Business Innovation Development Act of 1982 (Public Law 97–219, 15  
36 U.S.C. 638 note), and the declaration of policy in section 2 of the  
37 Small Business Act (15 U.S.C. 631).

38 (3) The interest of the Federal Government in increasing competi-  
39 tion and lowering costs by developing and locating alternative sources  
40 of supply and manufacture.

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

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

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

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

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

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

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

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

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

30 (9) authorizing the head of the agency to withhold payments under  
31 the contract (or exercise another remedy the head of the agency con-  
32 siders appropriate) during any period if the contractor does not meet  
33 the requirements of the contract pertaining to the delivery of technical  
34 data.

35 **§ 2303. Conflict of interest standards for consultants**

36 (a) CONTENT OF REGULATIONS.—The Administrator shall prescribe  
37 under this part Government-wide regulations that set forth—

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

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

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

6 (1) advisory and assistance services provided to the Federal Govern-  
7 ment to the extent necessary to identify and evaluate the potential for  
8 conflicts of interest that could be prejudicial to the interests of the  
9 United States;

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

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

19 (c) INTELLIGENCE ACTIVITIES EXEMPTION.—

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

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

28 (d) PRESIDENTIAL DETERMINATION.—Before the regulations required by  
29 subsection (a) are prescribed, the President shall determine if prescribing  
30 the regulations will have a significantly adverse effect on the accomplish-  
31 ment of the mission of the Defense Department or another Federal agency.  
32 If the President determines that the regulations will have such an adverse  
33 effect, the President shall so report to the appropriate committees of the  
34 Senate and the House of Representatives, stating in full the reasons for the  
35 determination. If such a report is submitted, the requirement for the regula-  
36 tions shall be null and void.

37 **§ 2304. Authority of Director of Office of Management and**  
38 **Budget not affected**

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

1 **§ 2305. Openness of meetings**

2 The Administrator by regulation shall require that—

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

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

8 **§ 2306. Comptroller General's access to information**

9 The Administrator and personnel in the Office of Federal Procurement  
10 Policy shall furnish information the Comptroller General may require to dis-  
11 charge the responsibilities of the Comptroller General. For this purpose, the  
12 Comptroller General or his representatives shall have access to all books,  
13 documents, papers, and records of the Office of Federal Procurement Pol-  
14 icy.

15 **§ 2307. Modular contracting for information technology**

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

19 (b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting,  
20 an executive agency's need for a system is satisfied in successive acquisi-  
21 tions of interoperable increments. Each increment complies with common or  
22 commercially accepted standards applicable to information technology so  
23 that the increments are compatible with other increments of information  
24 technology comprising the system.

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

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

30 (A) are easier to manage individually than would be one com-  
31 prehensive acquisition;

32 (B) address complex information technology objectives incre-  
33 mentally in order to enhance the likelihood of achieving workable  
34 solutions for attaining those objectives;

35 (C) provide for delivery, implementation, and testing of work-  
36 able systems or solutions in discrete increments, each of which  
37 comprises a system or solution that is not dependent on a subse-  
38 quent increment in order to perform its principal functions; and

39 (D) provide an opportunity for subsequent increments of the ac-  
40 quisition to take advantage of any evolution in technology or needs  
41 that occurs during conduct of the earlier increments;

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

6           (3) the information technology provided for in a contract for acquisi-  
7 tion of information technology should be delivered within 18 months  
8 after the solicitation resulting in award of the contract was issued.

9 **§ 2308. Protection of constitutional rights of contractors**

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

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

20 **§ 2309. Performance-based contracts or task orders for serv-**  
21 **ices to be treated as contracts for the procurement**  
22 **of commercial items**

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

27           (1) the value of the contract or task order is estimated not to exceed  
28 \$25,000,000;

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

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

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

33                   and

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

36           (3) the source of the services provides similar services to the general  
37 public under terms and conditions similar to those offered to the Fed-  
38 eral Government.

39       (b) REGULATIONS.—Regulations implementing this section shall require  
40 agencies to collect and maintain reliable data sufficient to identify the con-  
41 tracts or task orders treated as contracts for commercial items using the

1 authority of this section. The data may be collected using the Federal Pro-  
2 curement Data System or other reporting mechanism.

3 (c) REPORT.—Not later than 2 years after November 24, 2003, the Di-  
4 rector of the Office of Management and Budget shall prepare and submit  
5 to the Committees on Homeland Security and Governmental Affairs and on  
6 Armed Services of the Senate and the Committees on Government Reform  
7 and on Armed Services of the House of Representatives a report on the con-  
8 tracts or task orders treated as contracts for commercial items using the  
9 authority of this section. The report shall include data on the use of the  
10 authority, both government-wide and for each department and agency.

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

13 **PART C—PROCUREMENT**  
14 **CHAPTER 31—GENERAL**

Sec.

3101. Applicability.

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

3103. Acquisition programs.

3104. Small business concerns.

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

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

15 **§ 3101. Applicability**

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

19 (b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

20 (1) SIMPLIFIED ACQUISITION THRESHOLD.—

21 (A) DEFINITION.—For purposes of an acquisition by an execu-  
22 tive agency, the simplified acquisition threshold is as specified in  
23 section 134 of this title.

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

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

32 (c) EXCEPTIONS.—

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

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

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

3 (2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING,  
4 OPENING OF BIDS, AND LENGTH OF CONTRACT.—Sections 6101, 6103,  
5 and 6304 of this title do not apply to the procurement of property or  
6 services made by an executive agency pursuant to this part. However,  
7 when this part is made inapplicable by any law, sections 6101 and  
8 6103 of this title apply in the absence of authority conferred by statute  
9 to procure without advertising or without regard to section 6101 of this  
10 title. A law that authorizes an executive agency (other than an execu-  
11 tive agency exempted from this part by this subsection) to procure  
12 property or services without advertising or without regard to section  
13 6101 of this title is deemed to authorize the procurement pursuant to  
14 the provisions of this part relating to procedures other than sealed-bid  
15 procedures.

16 **§ 3102. Delegation and assignment of powers, functions, and**  
17 **responsibilities**

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

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

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

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

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

37 **§ 3103. Acquisition programs**

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

1 (b) ESTABLISHMENT OF GOALS.—

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

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

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

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

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

16 **§ 3104. Small business concerns**

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

20 **§ 3105. New contracts and grants and merit-based selection**  
21 **procedures**

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

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

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

26 or

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

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

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

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

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

39 (c) REQUIREMENTS FOR AWARDING NEW CONTRACT OR NEW GRANT.—  
40 A provision of law may not be construed as requiring a new contract or a

1 new grant to be awarded to a specified non-Federal Government entity un-  
 2 less the provision of law specifically—

3 (1) refers to this section;

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

5 and

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

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

13 **§ 3106. Erection, repair, or furnishing of public buildings**  
 14 **and improvements not authorized, and certain**  
 15 **contracts not permitted, by this part**

16 This part does not—

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

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

24 **CHAPTER 33—PLANNING AND SOLICITATION**

Sec.

3301. Full and open competition.

3302. Exclusion of particular source or restriction of solicitation to small business concerns.

3303. Use of noncompetitive procedures.

3304. Simplified procedures for small purchases.

3305. Planning and solicitation requirements.

3306. Preference for commercial items.

3307. Planning for future competition in contracts for major systems.

3308. Design-build selection procedures.

3309. Quantities to order.

3310. Qualification requirement.

25 **§ 3301. Full and open competition**

26 (a) IN GENERAL.—Except as provided in sections 3302, 3303(a), and  
 27 3304 of this title and except in the case of procurement procedures other-  
 28 wise expressly authorized by statute, an executive agency in conducting a  
 29 procurement for property or services shall—

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

33 (2) use the competitive procedure or combination of competitive pro-  
 34 cedures that is best suited under the circumstances of the procurement.

1 (b) APPROPRIATE COMPETITIVE PROCEDURES.—

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

4 (A) solicit sealed bids if—

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

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

9 (iii) it is not necessary to conduct discussions with the re-  
10 sponding sources about their bids; and

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

13 (B) request competitive proposals if sealed bids are not appro-  
14 priate under subparagraph (A).

15 (2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not re-  
16 quire the use of sealed-bid procedures in cases in which section 204(e)  
17 of title 23 applies.

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

22 **§ 3302. Exclusion of particular source or restriction of solici-**  
23 **tation to small business concerns**

24 (a) EXCLUSION OF PARTICULAR SOURCE.—

25 (1) CRITERIA FOR EXCLUSION.—An executive agency may provide  
26 for the procurement of property or services covered by section 3301 of  
27 this title using competitive procedures but excluding a particular source  
28 to establish or maintain an alternative source of supply for that prop-  
29 erty or service if the agency head determines that to do so would—

30 (A) increase or maintain competition and likely result in re-  
31 duced overall cost for the procurement, or for an anticipated pro-  
32 curement, of the property or services;

33 (B) be in the interest of national defense in having a facility  
34 (or a producer, manufacturer, or other supplier) available for fur-  
35 nishing the property or service in case of a national emergency or  
36 industrial mobilization;

37 (C) be in the interest of national defense in establishing or  
38 maintaining an essential engineering, research, or development ca-  
39 pability to be provided by an educational or other nonprofit insti-  
40 tution or a Federally funded research and development center;

1 (D) ensure the continuous availability of a reliable source of  
2 supply of the property or service;

3 (E) satisfy projected needs for the property or service deter-  
4 mined on the basis of a history of high demand for the property  
5 or service; or

6 (F) satisfy a critical need for medical, safety, or emergency sup-  
7 plies.

8 (2) DETERMINATION FOR CLASS DISALLOWED.—A determination  
9 under paragraph (1) may not be made for a class of purchases or con-  
10 tracts.

11 (b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An ex-  
12 ecutive agency may provide for the procurement of property or services cov-  
13 ered by section 3301 of this title using competitive procedures, but exclud-  
14 ing other than small business concerns in furtherance of sections 9 and 15  
15 of the Small Business Act (15 U.S.C. 638, 644).

16 (c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIRE-  
17 MENTS.—A contract awarded pursuant to the competitive procedures re-  
18 ferred to in subsections (a) and (b) is not subject to the justification and  
19 approval required by section 3303(d)(1) of this title.

20 **§ 3303. Use of noncompetitive procedures**

21 (a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An execu-  
22 tive agency may use procedures other than competitive procedures only  
23 when—

24 (1) the property or services needed by the executive agency are avail-  
25 able from only one responsible source and no other type of property  
26 or services will satisfy the needs of the executive agency;

27 (2) the executive agency's need for the property or services is of such  
28 an unusual and compelling urgency that the Federal Government would  
29 be seriously injured unless the executive agency is permitted to limit  
30 the number of sources from which it solicits bids or proposals;

31 (3) it is necessary to award the contract to a particular source—

32 (A) to maintain a facility, producer, manufacturer, or other sup-  
33 plier available for furnishing property or services in case of a na-  
34 tional emergency or to achieve industrial mobilization;

35 (B) to establish or maintain an essential engineering, research,  
36 or development capability to be provided by an educational or  
37 other nonprofit institution or a Federally funded research and de-  
38 velopment center;

39 (C) to procure the services of an expert for use, in any litigation  
40 or dispute (including any reasonably foreseeable litigation or dis-  
41 pute) involving the Federal Government, in any trial, hearing, or

1           proceeding before a court, administrative tribunal, or agency,  
2           whether or not the expert is expected to testify; or

3           (D) to procure the services of an expert or neutral for use in  
4           any part of an alternative dispute resolution or negotiated rule-  
5           making process, whether or not the expert is expected to testify;

6           (4) the terms of an international agreement or treaty between the  
7           Federal Government and a foreign government or an international or-  
8           ganization, or the written directions of a foreign government reimburs-  
9           ing the executive agency for the cost of the procurement of the prop-  
10          erty or services for that government, have the effect of requiring the  
11          use of procedures other than competitive procedures;

12          (5) subject to section 3105 of this title, a statute expressly author-  
13          izes or requires that the procurement be made through another execu-  
14          tive agency or from a specified source, or the agency's need is for a  
15          brand-name commercial item for authorized resale;

16          (6) the disclosure of the executive agency's needs would compromise  
17          the national security unless the agency is permitted to limit the number  
18          of sources from which it solicits bids or proposals; or

19          (7) the head of the executive agency (who may not delegate the au-  
20          thority under this paragraph)—

21                 (A) determines that it is necessary in the public interest to use  
22                 procedures other than competitive procedures in the particular  
23                 procurement concerned; and

24                 (B) notifies Congress in writing of that determination not less  
25                 than 30 days before the award of the contract.

26          (b) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE  
27          SOURCE.—For the purposes of subsection (a)(1), in the case of—

28                 (1) a contract for property or services to be awarded on the basis  
29                 of acceptance of an unsolicited research proposal, the property or serv-  
30                 ices are deemed to be available from only one source if the source has  
31                 submitted an unsolicited research proposal that demonstrates a unique  
32                 and innovative concept, the substance of which is not otherwise avail-  
33                 able to the Federal Government and does not resemble the substance  
34                 of a pending competitive procurement; or

35                 (2) a follow-on contract for the continued development or production  
36                 of a major system or highly specialized equipment, the property may  
37                 be deemed to be available only from the original source and may be  
38                 procured through procedures other than competitive procedures when  
39                 it is likely that award to a source other than the original source would  
40                 result in—

1 (A) substantial duplication of cost to the Federal Government  
2 that is not expected to be recovered through competition; or

3 (B) unacceptable delay in fulfilling the executive agency's needs.

4 (c) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency  
5 using procedures other than competitive procedures to procure property or  
6 services by reason of the application of paragraph (2) or (6) of subsection  
7 (a) shall request offers from as many potential sources as is practicable  
8 under the circumstances.

9 (d) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

10 (1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided  
11 in paragraphs (4) and (5), an executive agency may not award a con-  
12 tract using procedures other than competitive procedures unless—

13 (A) the contracting officer for the contract justifies the use of  
14 those procedures in writing and certifies the accuracy and com-  
15 pleteness of the justification;

16 (B) the justification is approved, in the case of a contract for  
17 an amount—

18 (i) exceeding \$500,000 but equal to or less than  
19 \$10,000,000, by the advocate for competition for the pro-  
20 curing activity (without further delegation) or by an official  
21 referred to in clause (ii) or (iii);

22 (ii) exceeding \$10,000,000 but equal to or less than  
23 \$50,000,000, by the head of the procuring activity or by a  
24 delegate who, if a member of the armed forces, is a general  
25 or flag officer or, if a civilian, is serving in a position in which  
26 the individual is entitled to receive the daily equivalent of the  
27 maximum annual rate of basic pay payable under section  
28 5376 of title 5 (or in a comparable or higher position under  
29 another schedule); or

30 (iii) exceeding \$50,000,000, by the senior procurement ex-  
31 ecutive of the agency designated pursuant to section 1702(c)  
32 of this title (without further delegation); and

33 (C) any required notice has been published with respect to the  
34 contract pursuant to section 1707 of this title and the executive  
35 agency has considered all bids or proposals received in response  
36 to that notice.

37 (2) ELEMENTS OF JUSTIFICATION.—The justification required by  
38 paragraph (1)(A) shall include—

39 (A) a description of the agency's needs;

40 (B) an identification of the statutory exception from the re-  
41 quirement to use competitive procedures and a demonstration,

1 based on the proposed contractor's qualifications or the nature of  
2 the procurement, of the reasons for using that exception;

3 (C) a determination that the anticipated cost will be fair and  
4 reasonable;

5 (D) a description of the market survey conducted or a state-  
6 ment of the reasons a market survey was not conducted;

7 (E) a listing of any sources that expressed in writing an interest  
8 in the procurement; and

9 (F) a statement of any actions the agency may take to remove  
10 or overcome a barrier to competition before a subsequent procure-  
11 ment for those needs.

12 (3) JUSTIFICATION SUBJECT TO PUBLIC INSPECTION.—The justifica-  
13 tion required by paragraph (1)(A) and any related information shall be  
14 made available for inspection by the public consistent with section 552  
15 of title 5.

16 (4) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the  
17 case of a procurement permitted by subsection (a)(2), the justification  
18 and approval required by paragraph (1) may be made after the con-  
19 tract is awarded.

20 (5) JUSTIFICATION NOT REQUIRED.—The justification and approval  
21 required by paragraph (1) are not required if—

22 (A) a statute expressly requires that the procurement be made  
23 from a specified source;

24 (B) the agency's need is for a brand-name commercial item for  
25 authorized resale;

26 (C) the procurement is permitted by subsection (a)(7); or

27 (D) the procurement is conducted under chapter 85 of this title  
28 or section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

29 (6) RESTRICTIONS ON EXECUTIVE AGENCIES.—

30 (A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERV-  
31 ICES.—In no case may an executive agency—

32 (i) enter into a contract for property or services using pro-  
33 cedures other than competitive procedures on the basis of the  
34 lack of advance planning or concerns related to the amount  
35 available to the agency for procurement functions; or

36 (ii) procure property or services from another executive  
37 agency unless the other executive agency complies fully with  
38 the requirements of this part in its procurement of the prop-  
39 erty or services.

1 (B) ADDITIONAL RESTRICTION.—The restriction set out in sub-  
2 paragraph (A)(ii) is in addition to any other restriction provided  
3 by law.

4 **§ 3304. Simplified procedures for small purchases**

5 (a) AUTHORIZATION.—To promote efficiency and economy in contracting  
6 and to avoid unnecessary burdens for agencies and contractors, the Federal  
7 Acquisition Regulation shall provide for special simplified procedures for  
8 purchases of property and services for amounts—

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

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

14 (b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of  
15 General Services shall prescribe regulations that provide special simplified  
16 procedures for acquisitions of leasehold interests in real property at rental  
17 rates that do not exceed the simplified acquisition threshold. The rental rate  
18 under a multiyear lease does not exceed the simplified acquisition threshold  
19 if the average annual amount of the rent payable for the period of the lease  
20 does not exceed the simplified acquisition threshold.

21 (c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or  
22 contract for an amount above the simplified acquisition threshold may not  
23 be divided into several purchases or contracts for lesser amounts to use the  
24 simplified procedures required by subsection (a).

25 (d) PROMOTION OF COMPETITION.—In using the simplified procedures,  
26 an executive agency shall promote competition to the maximum extent prac-  
27 ticable.

28 (e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUI-  
29 SITION REGULATION.—An executive agency shall comply with the Federal Ac-  
30 quisition Regulation provisions referred to in section 1901(f) of this title.

31 **§ 3305. Planning and solicitation requirements**

32 (a) PLANNING AND SPECIFICATIONS.—

33 (1) PREPARING FOR PROCUREMENT.—In preparing for the procure-  
34 ment of property or services, an executive agency shall—

35 (A) specify its needs and solicit bids or proposals in a manner  
36 designed to achieve full and open competition for the procurement;

37 (B) use advance procurement planning and market research;  
38 and

39 (C) develop specifications in the manner necessary to obtain full  
40 and open competition with due regard to the nature of the prop-  
41 erty or services to be acquired.

1           (2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under  
2 this part shall include specifications that—

3           (A) consistent with this part, permit full and open competition;  
4           and

5           (B) include restrictive provisions or conditions only to the extent  
6           necessary to satisfy the needs of the executive agency or as au-  
7           thorized by law.

8           (3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1)  
9           and (2), the type of specification included in a solicitation shall depend  
10          on the nature of the needs of the executive agency and the market  
11          available to satisfy those needs. Subject to those needs, specifications  
12          may be stated in terms of—

13          (A) function, so that a variety of products or services may qual-  
14          ify;

15          (B) performance, including specifications of the range of accept-  
16          able characteristics or of the minimum acceptable standards; or

17          (C) design requirements.

18          (b) CONTENTS OF SOLICITATION.—In addition to the specifications de-  
19          scribed in subsection (a), each solicitation for sealed bids or competitive pro-  
20          posals (other than for a procurement for commercial items using special  
21          simplified procedures or a purchase for an amount not greater than the sim-  
22          plified acquisition threshold) shall at a minimum include—

23           (1) a statement of—

24           (A) all significant factors and subfactors that the executive  
25           agency reasonably expects to consider in evaluating sealed bids  
26           (including price) or competitive proposals (including cost or price,  
27           cost-related or price-related factors and subfactors, and noncost-  
28           related or nonprice-related factors and subfactors); and

29           (B) the relative importance assigned to each of those factors  
30           and subfactors; and

31           (2)(A) in the case of sealed bids—

32           (i) a statement that sealed bids will be evaluated without discus-  
33           sions with the bidders; and

34           (ii) the time and place for the opening of the sealed bids; or

35           (B) in the case of competitive proposals—

36           (i) either a statement that the proposals are intended to be eval-  
37           uated with, and the award made after, discussions with the  
38           offerors, or a statement that the proposals are intended to be eval-  
39           uated, and the award made, without discussions with the offerors  
40           (other than discussions conducted for the purpose of minor clari-  
41           fication) unless discussions are determined to be necessary; and

1 (ii) the time and place for submission of proposals.

2 (e) EVALUATION FACTORS.—

3 (1) IN GENERAL.—In prescribing the evaluation factors to be in-  
4 cluded in each solicitation for competitive proposals, an executive agen-  
5 cy shall—

6 (A) establish clearly the relative importance assigned to the  
7 evaluation factors and subfactors, including the quality of the  
8 product or services to be provided (including technical capability,  
9 management capability, prior experience, and past performance of  
10 the offeror);

11 (B) include cost or price to the Federal Government as an eval-  
12 uation factor that must be considered in the evaluation of prop-  
13 osals; and

14 (C) disclose to offerors whether all evaluation factors other than  
15 cost or price, when combined, are—

16 (i) significantly more important than cost or price;

17 (ii) approximately equal in importance to cost or price; or

18 (iii) significantly less important than cost or price.

19 (2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations  
20 implementing paragraph (1)(C) may not define the terms “significantly  
21 more important” and “significantly less important” as specific numeric  
22 weights that would be applied uniformly to all solicitations or a class  
23 of solicitations.

24 (d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not  
25 prohibit an executive agency from—

26 (1) providing additional information in a solicitation, including nu-  
27 meric weights for all evaluation factors and subfactors on a case-by-  
28 case basis; or

29 (2) stating in a solicitation that award will be made to the offeror  
30 that meets the solicitation’s mandatory requirements at the lowest cost  
31 or price.

32 (e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive  
33 agency, in issuing a solicitation for a contract to be awarded using sealed  
34 bid procedures, may not include in the solicitation a clause providing for the  
35 evaluation of prices for options to purchase additional property or services  
36 under the contract unless the executive agency has determined that there  
37 is a reasonable likelihood that the options will be exercised.

38 (f) AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRAC-  
39 TORS.—

40 (1) DEFINITION.—In this subsection, the term “executive agency”  
41 has the meaning given that term in section 133 of this title.

1           (2) FEDERAL ACQUISITION REGULATION TO ALLOW TELECOM-  
2           MUTING.—The Federal Acquisition Regulation issued in accordance  
3           with sections 1121(b) and 1303(a)(1) of this title shall permit telecom-  
4           muting by employees of Federal Government contractors in the per-  
5           formance of contracts entered into with executive agencies.

6           (3) SCOPE OF ALLOWANCE.—The Federal Acquisition Regulation at  
7           a minimum shall provide that a solicitation for the acquisition of prop-  
8           erty or services may not set forth any requirement or evaluation cri-  
9           teria that would—

10           (A) render an offeror ineligible to enter into a contract on the  
11           basis of the inclusion of a plan of the offeror to allow the offeror’s  
12           employees to telecommute, unless the contracting officer concerned  
13           first determines that the requirements of the agency, including se-  
14           curity requirements, cannot be met if telecommuting is allowed  
15           and documents in writing the basis for the determination; or

16           (B) reduce the scoring of an offer on the basis of the inclusion  
17           in the offer of a plan of the offeror to allow the offeror’s employ-  
18           ees to telecommute, unless the contracting officer concerned first  
19           determines that the requirements of the agency, including security  
20           requirements, would be adversely impacted if telecommuting is al-  
21           lowed and documents in writing the basis for the determination.

22   **§ 3306. Preference for commercial items**

23           (a) RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COM-  
24           MERCIAL ITEMS.—

25           (1) THIS PART.—Unless otherwise specifically provided, all other  
26           provisions in this part also apply to the procurement of commercial  
27           items.

28           (2) LAWS LISTED IN FEDERAL ACQUISITION REGULATION.—A con-  
29           tract for the procurement of a commercial item entered into by the  
30           head of an executive agency is not subject to a law properly listed in  
31           the Federal Acquisition Regulation pursuant to section 1906 of this  
32           title.

33           (b) PREFERENCE.—The head of each executive agency shall ensure that,  
34           to the maximum extent practicable—

35           (1) requirements of the executive agency with respect to a procure-  
36           ment of supplies or services are stated in terms of—

37                   (A) functions to be performed;

38                   (B) performance required; or

39                   (C) essential physical characteristics;

40           (2) those requirements are defined so that commercial items or, to  
41           the extent that commercial items suitable to meet the executive agen-

1           cy's needs are not available, nondevelopmental items other than com-  
2           mercial items may be procured to fulfill those requirements; and

3           (3) offerors of commercial items and nondevelopmental items other  
4           than commercial items are provided an opportunity to compete in any  
5           procurement to fill those requirements.

6           (c) IMPLEMENTATION.—The head of each executive agency shall ensure  
7           that procurement officials in that executive agency, to the maximum extent  
8           practicable—

9           (1) acquire commercial items or nondevelopmental items other than  
10          commercial items to meet the needs of the executive agency;

11          (2) require that prime contractors and subcontractors at all levels  
12          under contracts of the executive agency incorporate commercial items  
13          or nondevelopmental items other than commercial items as components  
14          of items supplied to the executive agency;

15          (3) modify requirements in appropriate cases to ensure that the re-  
16          quirements can be met by commercial items or, to the extent that com-  
17          mercial items suitable to meet the executive agency's needs are not  
18          available, nondevelopmental items other than commercial items;

19          (4) state specifications in terms that enable and encourage bidders  
20          and offerors to supply commercial items or, to the extent that commer-  
21          cial items suitable to meet the executive agency's needs are not avail-  
22          able, nondevelopmental items other than commercial items in response  
23          to the executive agency solicitations;

24          (5) revise the executive agency's procurement policies, practices, and  
25          procedures not required by law to reduce any impediments in those  
26          policies, practices, and procedures to the acquisition of commercial  
27          items; and

28          (6) require training of appropriate personnel in the acquisition of  
29          commercial items.

30          (d) MARKET RESEARCH.—

31          (1) WHEN TO BE USED.—The head of an executive agency shall con-  
32          duct market research appropriate to the circumstances—

33                  (A) before developing new specifications for a procurement by  
34                  that executive agency; and

35                  (B) before soliciting bids or proposals for a contract in excess  
36                  of the simplified acquisition threshold.

37          (2) USE OF RESULTS.—The head of an executive agency shall use  
38          the results of market research to determine whether commercial items  
39          or, to the extent that commercial items suitable to meet the executive  
40          agency's needs are not available, nondevelopmental items other than  
41          commercial items are available that—

- 1 (A) meet the executive agency's requirements;  
2 (B) could be modified to meet the executive agency's require-  
3 ments; or  
4 (C) could meet the executive agency's requirements if those re-  
5 quirements were modified to a reasonable extent.

6 (3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—  
7 In conducting market research, the head of an executive agency should  
8 not require potential sources to submit more than the minimum infor-  
9 mation that is necessary to make the determinations required in para-  
10 graph (2).

11 (e) REGULATIONS.—

12 (1) IN GENERAL.—The Federal Acquisition Regulation shall provide  
13 regulations to implement this section, sections 102, 103, 105, and 110  
14 of this title, and chapter 140 of title 10.

15 (2) CONTRACT CLAUSES.—

16 (A) DEFINITION.—In this paragraph, the term “subcontract”  
17 includes a transfer of commercial items between divisions, subsidi-  
18 aries, or affiliates of a contractor or subcontractor.

19 (B) LIST OF CLAUSES TO BE INCLUDED.—The regulations pre-  
20 scribed under paragraph (1) shall contain a list of contract clauses  
21 to be included in contracts for the acquisition of commercial end  
22 items. To the maximum extent practicable, the list shall include  
23 only those contract clauses that are—

24 (i) required to implement provisions of law or executive or-  
25 ders applicable to acquisitions of commercial items or com-  
26 mercial components; or

27 (ii) determined to be consistent with standard commercial  
28 practice.

29 (C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations  
30 shall provide that the Federal Government shall not require a  
31 prime contractor to apply to any of its divisions, subsidiaries, af-  
32 filiates, subcontractors, or suppliers that are furnishing commer-  
33 cial items any contract clause except those that are—

34 (i) required to implement provisions of law or executive or-  
35 ders applicable to subcontractors furnishing commercial items  
36 or commercial components; or

37 (ii) determined to be consistent with standard commercial  
38 practice.

39 (D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the  
40 maximum extent practicable, only the contract clauses listed pur-  
41 suant to subparagraph (B) may be used in a contract, and only

1 the contract clauses referred to in subparagraph (C) may be re-  
2 quired to be used in a subcontract, for the acquisition of commer-  
3 cial items or commercial components by or for an executive agen-  
4 cy.

5 (E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition  
6 Regulation shall provide standards and procedures for waiving the  
7 use of contract clauses required pursuant to subparagraph (B),  
8 other than those required by law, including standards for deter-  
9 mining the cases in which a waiver is appropriate.

10 (3) MARKET ACCEPTANCE.—

11 (A) REQUIREMENT OF OFFERORS.—The Federal Acquisition  
12 Regulation shall provide that under appropriate conditions the  
13 head of an executive agency may require offerors to demonstrate  
14 that the items offered—

15 (i) have achieved commercial market acceptance or been  
16 satisfactorily supplied to an executive agency under current or  
17 recent contracts for the same or similar requirements; and

18 (ii) otherwise meet the item description, specifications, or  
19 other criteria prescribed in the public notice and solicitation  
20 relating to the contract.

21 (B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The  
22 Federal Acquisition Regulation shall provide guidance to ensure  
23 that the criteria for determining commercial market acceptance in-  
24 clude the consideration of—

25 (i) the minimum needs of the executive agency concerned;  
26 and

27 (ii) the entire relevant commercial market, including small  
28 businesses.

29 (4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

30 (A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal  
31 Acquisition Regulation shall include, for acquisitions of commercial  
32 items—

33 (i) a requirement that firm, fixed price contracts or fixed  
34 price with economic price adjustment contracts be used to the  
35 maximum extent practicable;

36 (ii) a prohibition on use of cost type contracts; and

37 (iii) subject to subparagraph (B), authority for use of a  
38 time-and-materials or labor-hour contract for the procurement  
39 of commercial services that are commonly sold to the general  
40 public through those contracts and are purchased by the pro-  
41 curing agency on a competitive basis.

1 (B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT  
 2 MAY BE USED.—A time-and-materials or labor-hour contract may  
 3 be used pursuant to the authority referred to in subparagraph  
 4 (A)(iii)—

5 (i) only for a procurement of commercial services in a cat-  
 6 egory of commercial services described in subparagraph (C);  
 7 and

8 (ii) only if the contracting officer for the procurement—

9 (I) executes a determination and findings that no  
 10 other contract type is suitable;

11 (II) includes in the contract a ceiling price that the  
 12 contractor exceeds at its own risk; and

13 (III) authorizes a subsequent change in the ceiling  
 14 price only on a determination, documented in the con-  
 15 tract file, that it is in the best interest of the procuring  
 16 agency to change the ceiling price.

17 (C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of  
 18 commercial services referred to in subparagraph (B) are as fol-  
 19 lows:

20 (i) Commercial services procured for support of a commer-  
 21 cial item, as described in section 103(5) of this title.

22 (ii) Any other category of commercial services that the Ad-  
 23 ministrator for Federal Procurement Policy designates in the  
 24 Federal Acquisition Regulation for the purposes of this sub-  
 25 paragraph on the basis that—

26 (I) the commercial services in the category are of a  
 27 type of commercial services that are commonly sold to  
 28 the general public through use of time-and-materials or  
 29 labor-hour contracts; and

30 (II) it would be in the best interests of the Federal  
 31 Government to authorize use of time-and-materials or  
 32 labor-hour contracts for purchases of the commercial  
 33 services in the category.

34 (5) CONTRACT QUALITY REQUIREMENTS.—Regulations prescribed  
 35 under paragraph (1) shall include provisions that—

36 (A) allow, to the maximum extent practicable, a contractor  
 37 under a commercial items acquisition to use the existing quality  
 38 assurance system of the contractor as a substitute for compliance  
 39 with an otherwise applicable requirement for the Federal Govern-  
 40 ment to inspect or test the commercial items before the contrac-

1           tor's tender of those items for acceptance by the Federal Govern-  
2           ment;

3           (B) require that, to the maximum extent practicable, the execu-  
4           tive agency take advantage of warranties (including extended war-  
5           ranties) offered by offerors of commercial items and use those  
6           warranties for the repair and replacement of commercial items;  
7           and

8           (C) set forth guidance regarding the use of past performance of  
9           commercial items and sources as a factor in contract award deci-  
10          sions.

11       **§ 3307. Planning for future competition in contracts for**  
12       **major systems**

13       (a) DEVELOPMENT CONTRACT.—

14           (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In pre-  
15           paring a solicitation for the award of a development contract for a  
16           major system, the head of an agency shall consider requiring in the so-  
17           licitation that an offeror include in its offer proposals described in  
18           paragraph (2). In determining whether to require the proposals, the  
19           head of the agency shall consider the purposes for which the system  
20           is being procured and the technology necessary to meet the system's  
21           required capabilities. If the proposals are required, the head of the  
22           agency shall consider them in evaluating the offeror's price.

23           (2) CONTENTS OF PROPOSALS.—The proposals that the head of an  
24           agency is to consider requiring in a solicitation for the award of a de-  
25           velopment contract are the following:

26           (A) Proposals to incorporate in the design of the major system  
27           items that are currently available within the supply system of the  
28           Federal agency responsible for the major system, available else-  
29           where in the national supply system, or commercially available  
30           from more than one source.

31           (B) With respect to items that are likely to be required in sub-  
32           stantial quantities during the system's service life, proposals to in-  
33           corporate in the design of the major system items that the Federal  
34           Government will be able to acquire competitively in the future.

35       (b) PRODUCTION CONTRACT.—

36           (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In pre-  
37           paring a solicitation for the award of a production contract for a major  
38           system, the head of an agency shall consider requiring in the solicita-  
39           tion that an offeror include in its offer proposals described in para-  
40           graph (2). In determining whether to require the proposals, the head  
41           of the agency shall consider the purposes for which the system is being

1       procured and the technology necessary to meet the system’s required  
2       capabilities. If the proposals are required, the head of the agency shall  
3       consider them in evaluating the offeror’s price.

4       (2) CONTENT OF PROPOSALS.—The proposals that the head of an  
5       agency is to consider requiring in a solicitation for the award of a pro-  
6       duction contract are proposals identifying opportunities to ensure that  
7       the Federal Government will be able to obtain on a competitive basis  
8       items procured in connection with the system that are likely to be re-  
9       procured in substantial quantities during the service life of the system.  
10      Proposals submitted in response to this requirement may include the  
11      following:

12           (A) Proposals to provide to the Federal Government the right  
13           to use technical data to be provided under the contract for com-  
14           petitive reprocurement of the item, together with the cost to the  
15           Federal Government of acquiring the data and the right to use the  
16           data.

17           (B) Proposals for the qualification or development of multiple  
18           sources of supply for the item.

19      (e) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—  
20      If the head of an agency is making a noncompetitive award of a develop-  
21      ment contract or a production contract for a major system, the factors spec-  
22      ified in subsections (a) and (b) to be considered in evaluating an offer for  
23      a contract may be considered as objectives in negotiating the contract to  
24      be awarded.

### 25      **§ 3308. Design-build selection procedures**

26      (a) AUTHORIZATION.—Unless the traditional acquisition approach of de-  
27      sign-bid-build established under sections 1101 to 1104 of title 40 or another  
28      acquisition procedure authorized by law is used, the head of an executive  
29      agency shall use the two-phase selection procedures authorized in this sec-  
30      tion for entering into a contract for the design and construction of a public  
31      building, facility, or work when a determination is made under subsection  
32      (b) that the procedures are appropriate for use.

33      (b) CRITERIA FOR USE.—A contracting officer shall make a determina-  
34      tion whether two-phase selection procedures are appropriate for use for en-  
35      tering into a contract for the design and construction of a public building,  
36      facility, or work when—

37           (1) the contracting officer anticipates that 3 or more offers will be  
38           received for the contract;

39           (2) design work must be performed before an offeror can develop a  
40           price or cost proposal for the contract;

1           (3) the offeror will incur a substantial amount of expense in pre-  
2           paring the offer; and

3           (4) the contracting officer has considered information such as the  
4           following:

5                 (A) The extent to which the project requirements have been  
6                 adequately defined.

7                 (B) The time constraints for delivery of the project.

8                 (C) The capability and experience of potential contractors.

9                 (D) The suitability of the project for use of the two-phase selec-  
10                tion procedures.

11                (E) The capability of the agency to manage the two-phase selec-  
12                tion process.

13                (F) Other criteria established by the agency.

14           (e) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of  
15           the following:

16                (1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency  
17                develops, either in-house or by contract, a scope of work statement for  
18                inclusion in the solicitation that defines the project and provides pro-  
19                spective offerors with sufficient information regarding the Federal Gov-  
20                ernment’s requirements (which may include criteria and preliminary de-  
21                sign, budget parameters, and schedule or delivery requirements) to en-  
22                able the offerors to submit proposals that meet the Federal Govern-  
23                ment’s needs. If the agency contracts for development of the scope of  
24                work statement, the agency shall contract for architectural and engi-  
25                neering services as defined by and in accordance with sections 1101 to  
26                1104 of title 40.

27                (2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting offi-  
28                cer solicits phase-one proposals that—

29                        (A) include information on the offeror’s—

30                               (i) technical approach; and

31                               (ii) technical qualifications; and

32                        (B) do not include—

33                               (i) detailed design information; or

34                               (ii) cost or price information.

35                (3) EVALUATION FACTORS.—The evaluation factors to be used in  
36                evaluating phase-one proposals are stated in the solicitation and include  
37                specialized experience and technical competence, capability to perform,  
38                past performance of the offeror’s team (including the architect-engineer  
39                and construction members of the team), and other appropriate factors,  
40                except that cost-related or price-related evaluation factors are not per-  
41                mitted. Each solicitation establishes the relative importance assigned to

1 the evaluation factors and subfactors that must be considered in the  
2 evaluation of phase-one proposals. The agency evaluates phase-one pro-  
3 posals on the basis of the phase-one evaluation factors set forth in the  
4 solicitation.

5 (4) SELECTION BY CONTRACTING OFFICER.—

6 (A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE  
7 EVALUATED.—The contracting officer selects as the most highly  
8 qualified the number of offerors specified in the solicitation to pro-  
9 vide the property or services under the contract and requests the  
10 selected offerors to submit phase-two competitive proposals that  
11 include technical proposals and cost or price information. Each so-  
12 licitation establishes with respect to phase two—

13 (i) the technical submission for the proposal, including de-  
14 sign concepts or proposed solutions to requirements addressed  
15 within the scope of work, or both; and

16 (ii) the evaluation factors and subfactors, including cost or  
17 price, that must be considered in the evaluations of proposals  
18 in accordance with subsections (b) to (d) of section 3305 of  
19 this title.

20 (B) SEPARATE EVALUATIONS.—The contracting officer sepa-  
21 rately evaluates the submissions described in clauses (i) and (ii)  
22 of subparagraph (A).

23 (5) AWARDING OF CONTRACT.—The agency awards the contract in  
24 accordance with chapter 37 of this title.

25 (d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED  
26 FOR PHASE-TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation  
27 issued pursuant to the procedures described in subsection (c) shall state the  
28 maximum number of offerors that are to be selected to submit competitive  
29 proposals pursuant to subsection (c)(4). The maximum number specified in  
30 the solicitation shall not exceed 5 unless the agency determines with respect  
31 to an individual solicitation that a specified number greater than 5 is in the  
32 Federal Government's interest and is consistent with the purposes and ob-  
33 jectives of the two-phase selection process.

34 (e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Ac-  
35 quisition Regulation shall include guidance—

36 (1) regarding the factors that may be considered in determining  
37 whether the two-phase contracting procedures authorized by subsection  
38 (a) are appropriate for use in individual contracting situations;

39 (2) regarding the factors that may be used in selecting contractors;  
40 and

41 (3) providing for a uniform approach to be used Government-wide.

1 **§ 3309. Quantities to order**

2 (a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency  
3 shall procure supplies in a quantity that—

4 (1) will result in the total cost and unit cost most advantageous to  
5 the Federal Government, where practicable; and

6 (2) does not exceed the quantity reasonably expected to be required  
7 by the agency.

8 (b) OFFEROR’S OPINION OF QUANTITY.—Each solicitation for a contract  
9 for supplies shall, if practicable, include a provision inviting each offeror re-  
10 sponding to the solicitation to state an opinion on whether the quantity of  
11 supplies proposed to be procured is economically advantageous to the Fed-  
12 eral Government and, if applicable, to recommend a quantity that would be  
13 more economically advantageous to the Federal Government. Each rec-  
14 ommendation shall include a quotation of the total price and the unit price  
15 for supplies procured in each recommended quantity.

16 **§ 3310. Qualification requirement**

17 (a) DEFINITION.—In this section, the term “qualification requirement”  
18 means a requirement for testing or other quality assurance demonstration  
19 that must be completed by an offeror before award of a contract.

20 (b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Ex-  
21 cept as provided in subsection (c), the head of an agency, before enforcing  
22 any qualification requirement, shall—

23 (1) prepare a written justification stating the necessity for estab-  
24 lishing the qualification requirement and specify why the qualification  
25 requirement must be demonstrated before contract award;

26 (2) specify in writing and make available to a potential offeror on  
27 request all requirements that a prospective offeror, or its product, must  
28 satisfy to become qualified, with those requirements to be limited to  
29 those least restrictive to meet the purposes necessitating the establish-  
30 ment of the qualification requirement;

31 (3) specify an estimate of the cost of testing and evaluation likely  
32 to be incurred by a potential offeror to become qualified;

33 (4) ensure that a potential offeror is provided, on request, a prompt  
34 opportunity to demonstrate at its own expense (except as provided in  
35 subsection (d)) its ability to meet the standards specified for qualifica-  
36 tion using—

37 (A) qualified personnel and facilities—

38 (i) of the agency concerned;

39 (ii) of another agency obtained through interagency agree-  
40 ment; or

41 (iii) under contract; or

1 (B) other methods approved by the agency (including use of ap-  
 2 proved testing and evaluation services not provided under contract  
 3 to the agency);

4 (5) if testing and evaluation services are provided under contract to  
 5 the agency for the purposes of paragraph (4), provide to the extent  
 6 possible that those services be provided by a contractor that—

7 (A) is not expected to benefit from an absence of additional  
 8 qualified sources; and

9 (B) is required in the contract to adhere to any restriction on  
 10 technical data asserted by the potential offeror seeking qualifica-  
 11 tion; and

12 (6) ensure that a potential offeror seeking qualification is promptly  
 13 informed whether qualification is attained and, if not attained, is  
 14 promptly furnished specific information about why qualification was  
 15 not attained.

16 (e) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

17 (1) APPLICABILITY.—Subsection (b) does not apply to a qualification  
 18 requirement established by statute prior to October 30, 1984.

19 (2) WAIVER AUTHORITY.—

20 (A) SUBMISSION OF DETERMINATION OF  
 21 UNREASONABLENESS.—Except as provided in subparagraph (C), if  
 22 it is unreasonable to specify the standards for qualification that  
 23 a prospective offeror or its product must satisfy, a determination  
 24 to that effect shall be submitted to the advocate for competition  
 25 of the procuring activity responsible for the purchase of the item  
 26 subject to the qualification requirement.

27 (B) AUTHORITY TO GRANT WAIVER.—After considering any  
 28 comments of the advocate for competition reviewing the deter-  
 29 mination, the head of the procuring activity may waive the re-  
 30 quirements of paragraphs (2) to (5) of subsection (b) for up to  
 31 2 years with respect to the item subject to the qualification re-  
 32 quirement.

33 (C) NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—Waiv-  
 34 er authority under this paragraph does not apply with respect to  
 35 a qualified products list.

36 (3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DE-  
 37 NIED.—A potential offeror may not be denied the opportunity to sub-  
 38 mit and have considered an offer for a contract solely because the po-  
 39 tential offeror has not been identified as meeting a qualification re-  
 40 quirement if the potential offeror can demonstrate to the satisfaction  
 41 of the contracting officer that the potential offeror or its product meets

1 the standards established for qualification or can meet those standards  
2 before the date specified for award of the contract.

3 (4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT RE-  
4 QUIRED.—This subsection does not require the referral of an offer to  
5 the Small Business Administration pursuant to section 8(b)(7) of the  
6 Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral  
7 is a challenge by the offeror to either the validity of the qualification  
8 requirement or the offeror's compliance with that requirement.

9 (5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an  
10 agency need not delay a proposed procurement to comply with sub-  
11 section (b) or to provide a potential offeror with an opportunity to dem-  
12 onstrate its ability to meet the standards specified for qualification.

13 (d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

14 (1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PROD-  
15 UCTS.—If the number of qualified sources or qualified products avail-  
16 able to compete actively for an anticipated future requirement is fewer  
17 than 2 actual manufacturers or the products of 2 actual manufactur-  
18 ers, respectively, the head of the agency concerned shall—

19 (A) publish notice periodically soliciting additional sources or  
20 products to seek qualification, unless the contracting officer deter-  
21 mines that doing so would compromise national security; and

22 (B) subject to paragraph (2), bear the cost of conducting the  
23 specified testing and evaluation (excluding the cost associated with  
24 producing the item or establishing the production, quality control,  
25 or other system to be tested and evaluated) for a small business  
26 concern or a product manufactured by a small business concern  
27 that has met the standards specified for qualification and that  
28 could reasonably be expected to compete for a contract for that  
29 requirement.

30 (2) WHEN AGENCY MAY BEAR COST.—The head of the agency con-  
31 cerned may bear the cost under paragraph (1)(B) only if the head of  
32 the agency determines that the additional qualified sources or products  
33 are likely to result in cost savings from increased competition for future  
34 requirements sufficient to offset (within a reasonable period of time  
35 considering the duration and dollar value of anticipated future require-  
36 ments) the cost incurred by the agency.

37 (3) CERTIFICATION REQUIRED.—The head of the agency shall re-  
38 quire a prospective contractor requesting the Federal Government to  
39 bear testing and evaluation costs under paragraph (1)(B) to certify its  
40 status as a small business concern under section 3 of the Small Busi-  
41 ness Act (15 U.S.C. 632).

(e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within 7 years after the establishment of a qualification requirement, the need for the requirement shall be examined and the standards of the requirement revalidated in accordance with the requirements of subsection (b). This subsection does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT ALLOWED.—Except in an emergency as determined by the head of the agency, after the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not enforce the requirement unless the agency complies with the requirements of subsection (b).

## CHAPTER 35—TRUTHFUL COST AND PRICING DATA

Sec.

- 3501. Definitions.
- 3502. Required cost or pricing data and certification.
- 3503. Exceptions.
- 3504. Cost or pricing data on below-threshold contracts.
- 3505. Submission of other information.
- 3506. Price reductions for defective cost or pricing data.
- 3507. Interest and penalties for certain overpayments.
- 3508. Right to examine contractor records.

### § 3501. Definitions

In this chapter:

(1) COMMERCIAL ITEM.—The term “commercial item” has the meaning provided the term by section 103 of this title.

(2) COST OR PRICING DATA.—The term “cost or pricing data” means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with section 3506(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include factual information from which a judgment was derived.

(3) SUBCONTRACT.—The term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

### § 3502. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an executive agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under this part to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

1 (A) in the case of a prime contract entered into after October  
2 13, 1994, the price of the contract to the Federal Government is  
3 expected to exceed \$500,000; and

4 (B) in the case of a prime contract entered into on or before  
5 October 13, 1994, the price of the contract to the Federal Govern-  
6 ment is expected to exceed \$100,000.

7 (2) CONTRACTOR.—The contractor for a prime contract under this  
8 part shall be required to submit cost or pricing data before the pricing  
9 of a change or modification to the contract if—

10 (A) in the case of a change or modification made to a prime  
11 contract referred to in paragraph (1)(A), the price adjustment is  
12 expected to exceed \$500,000;

13 (B) in the case of a change or modification made to a prime  
14 contract that was entered into on or before October 13, 1994, and  
15 that has been modified pursuant to subsection (f), the price ad-  
16 justment is expected to exceed \$500,000; and

17 (C) in the case of a change or modification not covered by sub-  
18 paragraph (A) or (B), the price adjustment is expected to exceed  
19 \$100,000.

20 (3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at  
21 any tier) of a contract under this part shall be required to submit cost  
22 or pricing data before the award of the subcontract if the prime con-  
23 tractor and each higher-tier subcontractor have been required to make  
24 available cost or pricing data under this chapter and—

25 (A) in the case of a subcontract under a prime contract referred  
26 to in paragraph (1)(A), the price of the subcontract is expected  
27 to exceed \$500,000;

28 (B) in the case of a subcontract entered into under a prime con-  
29 tract that was entered into on or before October 13, 1994, and  
30 that has been modified pursuant to subsection (f), the price of the  
31 subcontract is expected to exceed \$500,000; and

32 (C) in the case of a subcontract not covered by subparagraph  
33 (A) or (B), the price of the subcontract is expected to exceed  
34 \$100,000.

35 (4) SUBCONTRACTOR.—The subcontractor for a subcontract covered  
36 by paragraph (3) shall be required to submit cost or pricing data before  
37 the pricing of a change or modification to the subcontract if—

38 (A) in the case of a change or modification to a subcontract re-  
39 ferred to in paragraph (3)(A) or (B), the price adjustment is ex-  
40 pected to exceed \$500,000; and

1 (B) in the case of a change or modification to a subcontract re-  
2 ferred to in paragraph (3)(C), the price adjustment is expected to  
3 exceed \$100,000.

4 (b) CERTIFICATION.—A person required, as an offeror, contractor, or  
5 subcontractor, to submit cost or pricing data under subsection (a) (or re-  
6 quired by the head of the procuring activity concerned to submit the data  
7 under section 3504 of this title) shall be required to certify that, to the best  
8 of the person's knowledge and belief, the cost or pricing data submitted are  
9 accurate, complete, and current.

10 (c) TO WHOM SUBMITTED.—Cost or pricing data required to be sub-  
11 mitted under subsection (a) (or under section 3504 of this title), and a cer-  
12 tification required to be submitted under subsection (b), shall be sub-  
13 mitted—

14 (1) in the case of a submission by a prime contractor (or an offeror  
15 for a prime contract), to the contracting officer for the contract (or a  
16 designated representative of the contracting officer); or

17 (2) in the case of a submission by a subcontractor (or an offeror for  
18 a subcontract), to the prime contractor.

19 (d) APPLICATION OF CHAPTER.—Except as provided under section 3503  
20 of this title, this chapter applies to contracts entered into by the head of  
21 an executive agency on behalf of a foreign government.

22 (e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of require-  
23 ments for submission of certified cost or pricing data that is granted under  
24 section 3503(a)(3) of this title in the case of a contract or subcontract does  
25 not waive the requirement under subsection (a)(3) of this section for sub-  
26 mission of cost or pricing data in the case of subcontracts under that con-  
27 tract or subcontract unless the head of the procuring activity granting the  
28 waiver determines that the requirement under subsection (a)(3) of this sec-  
29 tion should be waived in the case of those subcontracts and justifies in writ-  
30 ing the reason for the determination.

31 (f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a con-  
32 tractor that was required to submit cost or pricing data under subsection  
33 (a) in connection with a prime contract entered into on or before October  
34 13, 1994, the head of the executive agency that entered into the contract  
35 shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of sub-  
36 section (a). All those modifications shall be made without requiring consid-  
37 eration.

38 (g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year  
39 that is divisible by 5, each amount set forth in subsection (a) shall be ad-  
40 justed to the amount that is equal to the fiscal year 1994 constant dollar  
41 value of the amount set forth. Any amount, as so adjusted, that is not even-

1 ly divisible by \$50,000 shall be rounded to the nearest multiple of \$50,000.  
 2 In the case of an amount that is evenly divisible by \$25,000 but not evenly  
 3 divisible by \$50,000, the amount shall be rounded to the next higher mul-  
 4 tiple of \$50,000.

5 **§ 3503. Exceptions**

6 (a) IN GENERAL.—Submission of certified cost or pricing data shall not  
 7 be required under section 3502 of this title in the case of a contract, a sub-  
 8 contract, or a modification of a contract or subcontract—

9 (1) for which the price agreed on is based on—

10 (A) adequate price competition; or

11 (B) prices set by law or regulation;

12 (2) for the acquisition of a commercial item; or

13 (3) in an exceptional case when the head of the procuring activity,  
 14 without delegation, determines that the requirements of this chapter  
 15 may be waived and justifies in writing the reasons for the determina-  
 16 tion.

17 (b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL  
 18 ITEMS.—In the case of a modification of a contract or subcontract for  
 19 a commercial item that is not covered by the exception to the submission  
 20 of certified cost or pricing data in paragraph (1) or (2) of subsection (a),  
 21 submission of certified cost or pricing data shall not be required under sec-  
 22 tion 3502 of this title if—

23 (1) the contract or subcontract being modified is a contract or sub-  
 24 contract for which submission of certified cost or pricing data may not  
 25 be required by reason of paragraph (1) or (2) of subsection (a); and

26 (2) the modification would not change the contract or subcontract  
 27 from a contract or subcontract for the acquisition of a commercial item  
 28 to a contract or subcontract for the acquisition of an item other than  
 29 a commercial item.

30 **§ 3504. Cost or pricing data on below-threshold contracts**

31 (a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b),  
 32 when certified cost or pricing data are not required to be submitted by sec-  
 33 tion 3502 of this title for a contract, subcontract, or modification of a con-  
 34 tract or subcontract, the data may nevertheless be required to be submitted  
 35 by the head of the procuring activity, but only if the head of the procuring  
 36 activity determines that the data are necessary for the evaluation by the  
 37 agency of the reasonableness of the price of the contract, subcontract, or  
 38 modification of a contract or subcontract. In any case in which the head  
 39 of the procuring activity requires the data to be submitted under this sec-  
 40 tion, the head of the procuring activity shall justify in writing the reason  
 41 for the requirement.

1 (b) EXCEPTION.—The head of the procuring activity may not require cer-  
 2 tified cost or pricing data to be submitted under this section for any con-  
 3 tract or subcontract, or modification of a contract or subcontract, covered  
 4 by the exceptions in section 3503(a)(1) or (2) of this title.

5 (c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring  
 6 activity may not delegate the functions under this section.

7 **§ 3505. Submission of other information**

8 (a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pric-  
 9 ing data are not required to be submitted under this chapter for a contract,  
 10 subcontract, or modification of a contract or subcontract, the contracting of-  
 11 ficer shall require submission of data other than certified cost or pricing  
 12 data to the extent necessary to determine the reasonableness of the price  
 13 of the contract, subcontract, or modification of the contract or subcontract.  
 14 Except in the case of a contract or subcontract covered by the exceptions  
 15 in section 3503(a)(1) of this title, the contracting officer shall require that  
 16 the data submitted include, at a minimum, appropriate information on the  
 17 prices at which the same item or similar items have previously been sold  
 18 that is adequate for evaluating the reasonableness of the price for the pro-  
 19 curement.

20 (b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation  
 21 shall include the following provisions regarding the types of information that  
 22 contracting officers may require under subsection (a):

23 (1) REASONABLE LIMITATIONS.—Reasonable limitations on requests  
 24 for sales data relating to commercial items.

25 (2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a con-  
 26 tracting officer limit, to the maximum extent practicable, the scope of  
 27 any request for information relating to commercial items from an offer-  
 28 or to only that information that is in the form regularly maintained  
 29 by the offeror in commercial operations.

30 (3) INFORMATION NOT TO BE DISCLOSED.—A statement that any in-  
 31 formation received relating to commercial items that is exempt from  
 32 disclosure under section 552(b) of title 5 shall not be disclosed by the  
 33 Federal Government.

34 **§ 3506. Price reductions for defective cost or pricing data**

35 (a) PROVISION REQUIRING ADJUSTMENT.—

36 (1) IN GENERAL.—A prime contract (or change or modification to  
 37 a prime contract) under which a certificate under section 3502(b) of  
 38 this title is required shall contain a provision that the price of the con-  
 39 tract to the Federal Government, including profit or fee, shall be ad-  
 40 justed to exclude any significant amount by which it may be deter-  
 41 mined by the head of the executive agency that the price was increased

1 because the contractor (or any subcontractor required to make the cer-  
2 tificate available) submitted defective cost or pricing data.

3 (2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For  
4 the purposes of this chapter, defective cost or pricing data are cost or  
5 pricing data that, as of the date of agreement on the price of the con-  
6 tract (or another date agreed on between the parties), were inaccurate,  
7 incomplete, or noncurrent. If for purposes of the preceding sentence the  
8 parties agree on a date other than the date of agreement on the price  
9 of the contract, the date agreed on by the parties shall be as close to  
10 the date of agreement on the price of the contract as is practicable.

11 (b) VALID DEFENSE.—In determining for purposes of a contract price  
12 adjustment under a contract provision required by subsection (a) whether,  
13 and to what extent, a contract price was increased because the contractor  
14 (or a subcontractor) submitted defective cost or pricing data, it is a defense  
15 that the Federal Government did not rely on the defective data submitted  
16 by the contractor or subcontractor.

17 (c) INVALID DEFENSES.—It is not a defense to an adjustment of the  
18 price of a contract under a contract provision required by subsection (a)  
19 that—

20 (1) the price of the contract would not have been modified even if  
21 accurate, complete, and current cost or pricing data had been sub-  
22 mitted by the contractor or subcontractor because the contractor or  
23 subcontractor—

24 (A) was the sole source of the property or services procured; or

25 (B) otherwise was in a superior bargaining position with respect  
26 to the property or services procured;

27 (2) the contracting officer should have known that the cost or pricing  
28 data in issue were defective even though the contractor or subcon-  
29 tractor took no affirmative action to bring the character of the data  
30 to the attention of the contracting officer;

31 (3) the contract was based on an agreement between the contractor  
32 and the Federal Government about the total cost of the contract and  
33 there was no agreement about the cost of each item procured under  
34 the contract; or

35 (4) the prime contractor or subcontractor did not submit a certifi-  
36 cation of cost or pricing data relating to the contract as required by  
37 section 3502(b) of this title.

38 (d) OFFSETS.—

39 (1) WHEN ALLOWED.—A contractor shall be allowed to offset an  
40 amount against the amount of a contract price adjustment under a  
41 contract provision required by subsection (a) if—

1 (A) the contractor certifies to the contracting officer (or to a  
2 designated representative of the contracting officer) that, to the  
3 best of the contractor's knowledge and belief, the contractor is en-  
4 titled to the offset; and

5 (B) the contractor proves that the cost or pricing data were  
6 available before the date of agreement on the price of the contract  
7 (or price of the modification), or, if applicable, consistent with  
8 subsection (a)(2), another date agreed on by the parties, and that  
9 the data were not submitted as specified in section 3502(c) of this  
10 title before that date.

11 (2) WHEN NOT ALLOWED.—A contractor shall not be allowed to off-  
12 set an amount otherwise authorized to be offset under paragraph (1)  
13 if—

14 (A) the certification under section 3502(b) of this title with re-  
15 spect to the cost or pricing data involved was known to be false  
16 when signed; or

17 (B) the Federal Government proves that, had the cost or pricing  
18 data referred to in paragraph (1)(B) been submitted to the Fed-  
19 eral Government before date of agreement on the price of the con-  
20 tract (or price of the modification), or, if applicable, under sub-  
21 section (a)(2), another date agreed on by the parties, the submis-  
22 sion of the cost or pricing data would not have resulted in an in-  
23 crease in that price in the amount to be offset.

24 **§ 3507. Interest and penalties for certain overpayments**

25 (a) IN GENERAL.—If the Federal Government makes an overpayment to  
26 a contractor under a contract with an executive agency subject to this chap-  
27 ter and the overpayment was due to the submission by the contractor of  
28 defective cost or pricing data, the contractor shall be liable to the Federal  
29 Government—

30 (1) for interest on the amount of the overpayment, to be computed—

31 (A) for the period beginning on the date the overpayment was  
32 made to the contractor and ending on the date the contractor re-  
33 pays the amount of the overpayment to the Federal Government;  
34 and

35 (B) at the current rate prescribed by the Secretary of the  
36 Treasury under section 6621 of the Internal Revenue Code of  
37 1986 (26 U.S.C. 6621); and

38 (2) if the submission of the defective data was a knowing submission,  
39 for an additional amount equal to the amount of the overpayment.

40 (b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFI-  
41 CATION.—Any liability under this section of a contractor that submits cost

1 or pricing data but refuses to submit the certification required by section  
 2 3502(b) of this title with respect to the cost or pricing data is not affected  
 3 by the refusal to submit the certification.

4 **§ 3508. Right to examine contractor records**

5 For the purpose of evaluating the accuracy, completeness, and currency  
 6 of cost or pricing data required to be submitted by this chapter, an execu-  
 7 tive agency shall have the authority provided by section 4706(b)(2) of this  
 8 title.

9 **CHAPTER 37—AWARDING OF CONTRACTS**

Sec.

- 3701. Basis of award and rejection.
- 3702. Sealed bids.
- 3703. Competitive proposals.
- 3704. Post-award debriefings.
- 3705. Pre-award debriefings.
- 3706. Encouragement of alternative dispute resolution.
- 3707. Antitrust violations.
- 3708. Protests.

10 **§ 3701. Basis of award and rejection**

11 (a) AWARD.—An executive agency shall evaluate sealed bids and competi-  
 12 tive proposals, and award a contract, based solely on the factors specified  
 13 in the solicitation.

14 (b) REJECTION.—All sealed bids or competitive proposals received in re-  
 15 sponse to a solicitation may be rejected if the agency head determines that  
 16 rejection is in the public interest.

17 **§ 3702. Sealed bids**

18 (a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time  
 19 and place stated in the solicitation.

20 (b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall  
 21 evaluate the bids in accordance with section 3701(a) of this title without  
 22 discussions with the bidders and, except as provided in section 3701(b) of  
 23 this title, shall award a contract with reasonable promptness to the respon-  
 24 sible source whose bid conforms to the solicitation and is most advantageous  
 25 to the Federal Government, considering only price and the other price-re-  
 26 lated factors included in the solicitation.

27 (c) NOTICE OF AWARD.—The award of a contract shall be made by trans-  
 28 mitting, in writing or by electronic means, notice of the award to the suc-  
 29 cessful bidder. Within 3 days after the date of contract award, the executive  
 30 agency shall notify, in writing or by electronic means, each bidder not  
 31 awarded the contract that the contract has been awarded.

32 **§ 3703. Competitive proposals**

33 (a) EVALUATION AND AWARD.—An executive agency shall evaluate com-  
 34 petitive proposals in accordance with section 3701(a) of this title and may  
 35 award a contract—

1 (1) after discussions with the offerors, provided that written or oral  
 2 discussions have been conducted with all responsible offerors who sub-  
 3 mit proposals within the competitive range; or

4 (2) based on the proposals received and without discussions with the  
 5 offerors (other than discussions conducted for the purpose of minor  
 6 clarification), if, as required by section 3305(b)(2)(B)(i) of this title,  
 7 the solicitation included a statement that proposals are intended to be  
 8 evaluated, and award made, without discussions unless discussions are  
 9 determined to be necessary.

10 (b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer deter-  
 11 mines that the number of offerors that would otherwise be included in the  
 12 competitive range under subsection (a)(1) exceeds the number at which an  
 13 efficient competition can be conducted, the contracting officer may limit the  
 14 number of proposals in the competitive range, in accordance with the cri-  
 15 teria specified in the solicitation, to the greatest number that will permit  
 16 an efficient competition among the offerors rated most highly in accordance  
 17 with those criteria.

18 (c) CRITERIA FOR AWARDING CONTRACT.—Except as otherwise provided  
 19 in section 3701(b) of this title, the executive agency shall award a contract  
 20 with reasonable promptness to the responsible source whose proposal is most  
 21 advantageous to the Federal Government, considering only cost or price and  
 22 the other factors included in the solicitation.

23 (d) NOTICE OF AWARD.—The executive agency shall award the contract  
 24 by transmitting, in writing or by electronic means, notice of the award to  
 25 that source and, within 3 days after the date of contract award, shall notify,  
 26 in writing or by electronic means, all other offerors of the rejection of their  
 27 proposals.

#### 28 **§ 3704. Post-award debriefings**

29 (a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the  
 30 head of an executive agency on the basis of competitive proposals, an unsuc-  
 31 cessful offeror, on written request received by the agency within 3 days after  
 32 the date on which the unsuccessful offeror receives the notification of the  
 33 contract award, shall be debriefed and furnished the basis for the selection  
 34 decision and contract award.

35 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall  
 36 debrief the offeror within, to the maximum extent practicable, 5 days after  
 37 receipt of the request by the executive agency.

38 (c) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a  
 39 minimum—

40 (1) the executive agency's evaluation of the significant weak or defi-  
 41 cient factors in the offeror's offer;

1 (2) the overall evaluated cost and technical rating of the offer of the  
2 contractor awarded the contract and the overall evaluated cost and  
3 technical rating of the offer of the debriefed offeror;

4 (3) the overall ranking of all offers;

5 (4) a summary of the rationale for the award;

6 (5) in the case of a proposal that includes a commercial item that  
7 is an end item under the contract, the make and model of the item  
8 being provided in accordance with the offer of the contractor awarded  
9 the contract; and

10 (6) reasonable responses to relevant questions posed by the debriefed  
11 offeror as to whether source selection procedures set forth in the solici-  
12 tation, applicable regulations, and other applicable authorities were fol-  
13 lowed by the executive agency.

14 (d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not in-  
15 clude point-by-point comparisons of the debriefed offeror's offer with other  
16 offers and may not disclose any information that is exempt from disclosure  
17 under section 552(b) of title 5.

18 (e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for  
19 competitive proposals shall include a statement that information described  
20 in subsection (c) may be disclosed in post-award debriefings.

21 (f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of  
22 the contract award and as a result of a successful procurement protest, the  
23 executive agency seeks to fulfill the requirement under the protested con-  
24 tract either on the basis of a new solicitation of offers or on the basis of  
25 new best and final offers requested for that contract, the head of the execu-  
26 tive agency shall make available to all offerors—

27 (1) the information provided in debriefings under this section regard-  
28 ing the offer of the contractor awarded the contract; and

29 (2) the same information that would have been provided to the origi-  
30 nal offerors.

31 (g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall  
32 include a summary of the debriefing in the contract file.

### 33 **§ 3705. Pre-award debriefings**

34 (a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes  
35 an offeror submitting a competitive proposal from the competitive range (or  
36 otherwise excludes that offeror from further consideration prior to the final  
37 source selection decision), the excluded offeror may request in writing, with-  
38 in 3 days after the date on which the excluded offeror receives notice of its  
39 exclusion, a debriefing prior to award.

40 (b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer  
41 shall make every effort to debrief the unsuccessful offeror as soon as prac-

1 ticable but may refuse the request for a debriefing if it is not in the best  
2 interests of the Federal Government to conduct a debriefing at that time.

3 (c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting of-  
4 ficer is required to debrief an excluded offeror in accordance with section  
5 3704 of this title only if that offeror requested and was refused a pre-award  
6 debriefing under subsections (a) and (b).

7 (d) INFORMATION TO BE PROVIDED.—The debriefing conducted under  
8 this section shall include—

9 (1) the executive agency’s evaluation of the significant elements in  
10 the offeror’s offer;

11 (2) a summary of the rationale for the offeror’s exclusion; and

12 (3) reasonable responses to relevant questions posed by the debriefed  
13 offeror as to whether source selection procedures set forth in the solici-  
14 tation, applicable regulations, and other applicable authorities were fol-  
15 lowed by the executive agency.

16 (e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted  
17 pursuant to this section may not disclose the number or identity of other  
18 offerors and shall not disclose information about the content, ranking, or  
19 evaluation of other offerors’ proposals.

20 (f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall  
21 include a summary of the debriefing in the contract file.

## 22 § 3706. Encouragement of alternative dispute resolution

23 The Federal Acquisition Regulation shall include a provision encouraging  
24 the use of alternative dispute resolution techniques to provide informal, ex-  
25 peditious, and inexpensive procedures for an offeror to consider using before  
26 filing a protest, prior to the award of a contract, of the exclusion of the  
27 offeror from the competitive range (or otherwise from further consideration)  
28 for that contract.

## 29 § 3707. Antitrust violations

30 If the agency head considers that a bid or proposal evidences a violation  
31 of the antitrust laws, the agency head shall refer the bid or proposal to the  
32 Attorney General for appropriate action.

## 33 § 3708. Protests

34 (a) PROTEST FILE.—

35 (1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation  
36 for a contract issued by, or an award or proposed award of a contract  
37 by, the head of an executive agency, a protest is filed pursuant to the  
38 procedures in subchapter V of chapter 35 of title 31, and an actual  
39 or prospective offeror requests, a file of the protest shall be established  
40 by the procuring activity and reasonable access shall be provided to ac-  
41 tual or prospective offerors.

1 (2) REDACTED INFORMATION.—Information exempt from disclosure  
 2 under section 552 of title 5 may be redacted in a file established pursu-  
 3 ant to paragraph (1) unless an applicable protective order provides oth-  
 4 erwise.

5 (b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest,  
 6 the head of an executive agency determines that a solicitation, proposed  
 7 award, or award does not comply with the requirements of law or regula-  
 8 tion, the head of the executive agency may—

9 (1) take any action set out in subparagraphs (A) to (F) of subsection  
 10 (b)(1) of section 3554 of title 31; and

11 (2) pay costs described in paragraph (1) of section 3554(e) of title  
 12 31 within the limits referred to in paragraph (2) of section 3554(e).

### 13 **CHAPTER 39—SPECIFIC TYPES OF CONTRACTS**

Sec.

3901. Contracts awarded using procedures other than sealed-bid procedures.

3902. Severable services contracts for periods crossing fiscal years.

3903. Multiyear contracts.

3904. Contract authority for severable services contracts and multiyear contracts.

3905. Cost contracts.

#### 14 **§ 3901. Contracts awarded using procedures other than** 15 **sealed-bid procedures**

16 (a) AUTHORIZED TYPES.—Except as provided in section 3905 of this  
 17 title, contracts awarded after using procedures other than sealed-bid proce-  
 18 dures may be of any type which in the opinion of the agency head will pro-  
 19 mote the best interests of the Federal Government.

20 (b) REQUIRED WARRANTY.—

21 (1) CONTENT.—Every contract awarded after using procedures other  
 22 than sealed-bid procedures shall contain a suitable warranty, as deter-  
 23 mined by the agency head, by the contractor that no person or selling  
 24 agency has been employed or retained to solicit or secure the contract  
 25 on an agreement or understanding for a commission, percentage, bro-  
 26 kerage, or contingent fee, except for bona fide employees or bona fide  
 27 established commercial or selling agencies the contractor maintains to  
 28 secure business.

29 (2) REMEDY FOR BREACH OR VIOLATION.—For the breach or viola-  
 30 tion of the warranty, the Federal Government may annul the contract  
 31 without liability or deduct from the contract price or consideration the  
 32 full amount of the commission, percentage, brokerage, or contingent  
 33 fee.

34 (3) NONAPPLICATION.—Paragraph (1) does not apply to a contract  
 35 for an amount that is not greater than the simplified acquisition  
 36 threshold or to a contract for the acquisition of commercial items.

1    **§ 3902. Severable services contracts for periods crossing fis-**  
 2                    **cal years**

3           (a) **AUTHORITY TO ENTER INTO CONTRACT.**—The head of an executive  
 4 agency may enter into a contract for the procurement of severable services  
 5 for a period that begins in one fiscal year and ends in the next fiscal year  
 6 if (without regard to any option to extend the period of the contract) the  
 7 contract period does not exceed one year.

8           (b) **OBLIGATION OF AMOUNTS.**—Amounts made available for a fiscal year  
 9 may be obligated for the total amount of a contract entered into under the  
 10 authority of this section.

11    **§ 3903. Multiyear contracts**

12           (a) **DEFINITION.**—In this section, a multiyear contract is a contract for  
 13 the purchase of property or services for more than one, but not more than  
 14 5, program years.

15           (b) **AUTHORITY TO ENTER INTO CONTRACT.**—An executive agency may  
 16 enter into a multiyear contract for the acquisition of property or services  
 17 if—

18                   (1) amounts are available and obligated for the contract, for the full  
 19 period of the contract or for the first fiscal year in which the contract  
 20 is in effect, and for the estimated costs associated with a necessary ter-  
 21 mination of the contract; and

22                   (2) the executive agency determines that—

23                           (A) the need for the property or services is reasonably firm and  
 24 continuing over the period of the contract; and

25                           (B) a multiyear contract will serve the best interests of the Fed-  
 26 eral Government by encouraging full and open competition or pro-  
 27 moting economy in administration, performance, and operation of  
 28 the agency's programs.

29           (c) **TERMINATION CLAUSE.**—A multiyear contract entered into under the  
 30 authority of this section shall include a clause that provides that the con-  
 31 tract shall be terminated if amounts are not made available for the continu-  
 32 ation of the contract in a fiscal year covered by the contract. Amounts avail-  
 33 able for paying termination costs shall remain available for that purpose  
 34 until the costs associated with termination of the contract are paid.

35           (d) **CANCELLATION CEILING NOTICE.**—Before a contract described in  
 36 subsection (b) that contains a clause setting forth a cancellation ceiling in  
 37 excess of \$10,000,000 may be awarded, the executive agency shall give writ-  
 38 ten notification of the proposed contract and of the proposed cancellation  
 39 ceiling for that contract to Congress. The contract may not be awarded until  
 40 the end of the 30-day period beginning on the date of the notification.

1 (e) CONTINGENCY CLAUSE FOR APPROPRIATION OF AMOUNTS.—A  
 2 multiyear contract may provide that performance under the contract after  
 3 the first year of the contract is contingent on the appropriation of amounts  
 4 and (if the contract does so provide) that a cancellation payment shall be  
 5 made to the contractor if the amounts are not appropriated.

6 (f) OTHER LAW NOT AFFECTED.—This section does not modify or affect  
 7 any other provision of law that authorizes multiyear contracts.

8 **§ 3904. Contract authority for severable services contracts**  
 9 **and multiyear contracts**

10 (a) COMPTROLLER GENERAL.—The Comptroller General may use avail-  
 11 able amounts to enter into contracts for the procurement of severable serv-  
 12 ices for a period that begins in one fiscal year and ends in the next fiscal  
 13 year and to enter into multiyear contracts for the acquisition of property  
 14 and nonaudit-related services to the same extent as executive agencies under  
 15 sections 3902 and 3903 of this title.

16 (b) LIBRARY OF CONGRESS.—The Library of Congress may use available  
 17 amounts to enter into contracts for the lease or procurement of severable  
 18 services for a period that begins in one fiscal year and ends in the next fis-  
 19 cal year and to enter into multiyear contracts for the acquisition of property  
 20 and services pursuant to sections 3902 and 3903 of this title.

21 (c) CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTA-  
 22 TIVES.—The Chief Administrative Officer of the House of Representatives  
 23 may enter into—

24 (1) contracts for the procurement of severable services for a period  
 25 that begins in one fiscal year and ends in the next fiscal year to the  
 26 same extent as the head of an executive agency under the authority of  
 27 section 3902 of this title; and

28 (2) multiyear contracts for the acquisitions of property and  
 29 nonaudit-related services to the same extent as executive agencies  
 30 under the authority of section 3903 of this title.

31 (d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office  
 32 may use available amounts to enter into contracts for the procurement of  
 33 severable services for a period that begins in one fiscal year and ends in  
 34 the next fiscal year and may enter into multiyear contracts for the acqui-  
 35 sition of property and services to the same extent as executive agencies under  
 36 the authority of sections 3902 and 3903 of this title.

37 (e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE  
 38 SENATE.—Subject to regulations prescribed by the Committee on Rules and  
 39 Administration of the Senate, the Secretary and the Sergeant at Arms and  
 40 Doorkeeper of the Senate may enter into—

1 (1) contracts for the procurement of severable services for a period  
 2 that begins in one fiscal year and ends in the next fiscal year to the  
 3 same extent and under the same conditions as the head of an executive  
 4 agency under the authority of section 3902 of this title; and

5 (2) multiyear contracts for the acquisition of property and services  
 6 to the same extent and under the same conditions as executive agencies  
 7 under the authority of section 3903 of this title.

8 (f) CAPITOL POLICE.—The United States Capitol Police may enter into—

9 (1) contracts for the procurement of severable services for a period  
 10 that begins in one fiscal year and ends in the next fiscal year to the  
 11 same extent as the head of an executive agency under the authority of  
 12 section 3902 of this title; and

13 (2) multiyear contracts for the acquisitions of property and  
 14 nonaudit-related services to the same extent as executive agencies  
 15 under the authority of section 3903 of this title.

16 (g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may  
 17 enter into—

18 (1) contracts for the procurement of severable services for a period  
 19 that begins in one fiscal year and ends in the next fiscal year to the  
 20 same extent as the head of an executive agency under the authority of  
 21 section 3902 of this title; and

22 (2) multiyear contracts for the acquisitions of property and  
 23 nonaudit-related services to the same extent as executive agencies  
 24 under the authority of section 3903 of this title.

25 (h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of  
 26 the Smithsonian Institution may enter into—

27 (1) contracts for the procurement of severable services for a period  
 28 that begins in one fiscal year and ends in the next fiscal year under  
 29 the authority of section 3902 of this title; and

30 (2) multiyear contracts for the acquisition of property and services  
 31 under the authority of section 3903 of this title.

32 **§ 3905. Cost contracts**

33 (a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—  
 34 The cost-plus-a-percentage-of-cost system of contracting shall not be used.

35 (b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

36 (1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the  
 37 fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the  
 38 estimated cost of the contract, not including the fee, as determined by  
 39 the agency head at the time of entering into the contract.

40 (2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The  
 41 fee in a cost-plus-a-fixed-fee contract for experimental, developmental,

1 or research work shall not exceed 15 percent of the estimated cost of  
2 the contract, not including the fee.

3 (3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a  
4 cost-plus-a-fixed-fee contract for architectural or engineering services  
5 relating to any public works or utility project may include the contrac-  
6 tor’s costs and shall not exceed 6 percent of the estimated cost, not  
7 including the fee, as determined by the agency head at the time of en-  
8 tering into the contract, of the project to which the fee applies.

9 (c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall pro-  
10 vide for advance notification by the contractor to the procuring agency of  
11 any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price sub-  
12 contract or purchase order which exceeds in dollar amount either the sim-  
13 plified acquisition threshold or 5 percent of the total estimated cost of the  
14 prime contract.

15 (d) RIGHT TO AUDIT.—A procuring agency, through any authorized rep-  
16 resentative thereof, has the right to inspect the plans and to audit the books  
17 and records of a prime contractor or subcontractor engaged in the perform-  
18 ance of a cost or cost-plus-a-fixed-fee contract.

## 19 **CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS**

Sec.

- 4101. Definitions.
- 4102. Authorities or responsibilities not affected.
- 4103. General authority.
- 4104. Guidance on use of task and delivery order contracts.
- 4105. Advisory and assistance services.
- 4106. Orders.

### 20 **§ 4101. Definitions**

21 In this chapter:

22 (1) DELIVERY ORDER CONTRACT.—The term “delivery order con-  
23 tract” means a contract for property that—

24 (A) does not procure or specify a firm quantity of property  
25 (other than a minimum or maximum quantity); and

26 (B) provides for the issuance of orders for the delivery of prop-  
27 erty during the period of the contract.

28 (2) TASK ORDER CONTRACT.—The term “task order contract”  
29 means a contract for services that—

30 (A) does not procure or specify a firm quantity of services  
31 (other than a minimum or maximum quantity); and

32 (B) provides for the issuance of orders for the performance of  
33 tasks during the period of the contract.

### 34 **§ 4102. Authorities or responsibilities not affected**

35 This chapter does not modify or supersede, and is not intended to impair  
36 or restrict, authorities or responsibilities under sections 1101 to 1104 of  
37 title 40.

1    **§ 4103. General authority**

2       (a) **AUTHORITY TO AWARD.**—Subject to the requirements of this section,  
3 section 4106 of this title, and other applicable law, the head of an executive  
4 agency may enter into a task or delivery order contract for procurement of  
5 services or property.

6       (b) **SOLICITATION.**—The solicitation for a task or delivery order contract  
7 shall include—

8           (1) the period of the contract, including the number of options to  
9 extend the contract and the period for which the contract may be ex-  
10 tended under each option;

11           (2) the maximum quantity or dollar value of the services or property  
12 to be procured under the contract; and

13           (3) a statement of work, specifications, or other description that rea-  
14 sonably describes the general scope, nature, complexity, and purposes  
15 of the services or property to be procured under the contract.

16       (c) **APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PRO-**  
17 **CEDURES.**—The head of an executive agency may use procedures other than  
18 competitive procedures to enter into a task or delivery order contract under  
19 this section only if an exception in section 3303(a) of this title applies to  
20 the contract and the use of those procedures is approved in accordance with  
21 section 3303(d) of this title.

22       (d) **SINGLE AND MULTIPLE CONTRACT AWARDS.**—

23           (1) **EXERCISE OF AUTHORITY.**—The head of an executive agency  
24 may exercise the 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 agen-  
27 cy has the option to do so, to award separate task or delivery  
28 order contracts for the same or similar services or property to 2  
29 or more sources.

30           (2) **DETERMINATION NOT REQUIRED.**—No determination under sec-  
31 tion 3302 of this title is required for an award of multiple task or de-  
32 livery order contracts under paragraph (1)(B).

33           (3) **REGULATIONS.**—Regulations implementing this subsection shall  
34 establish—

35                   (A) a preference for awarding, to the maximum extent prac-  
36 ticable, multiple task or delivery order contracts for the same or  
37 similar services or property under paragraph (1)(B); and

38                   (B) criteria for determining when award of multiple task or de-  
39 livery order contracts would not be in the best interest of the Fed-  
40 eral Government.

1 (e) CONTRACT MODIFICATIONS.—A task or delivery order may not in-  
 2 crease the scope, period, or maximum value of the task or delivery order  
 3 contract under which the order is issued. The scope, period, or maximum  
 4 value of the contract may be increased only by modification of the contract.

5 (f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE  
 6 SERVICES.—Except as otherwise specifically provided in section 4105 of this  
 7 title, this section does not apply to a task or delivery order contract for the  
 8 acquisition of advisory and assistance services (as defined in section 1105(g)  
 9 of title 31).

10 (g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in  
 11 this section may be construed to limit or expand any authority of the head  
 12 of an executive agency or the Administrator of General Services to enter  
 13 into schedule, multiple award, or task or delivery order contracts under any  
 14 other provision of law.

15 **§ 4104. Guidance on use of task and delivery order contracts**

16 (a) GUIDANCE IN FEDERAL ACQUISITION REGULATION.—The Federal  
 17 Acquisition Regulation issued in accordance with sections 1121(b) and  
 18 1303(a)(1) of this title shall provide guidance to agencies on the appropriate  
 19 use of task and delivery order contracts in accordance with this chapter and  
 20 sections 2304a to 2304d of title 10.

21 (b) CONTENT OF REGULATIONS.—The regulations issued pursuant to  
 22 subsection (a) at a minimum shall provide specific guidance on—

23 (1) the appropriate use of Government-wide and other multiagency  
 24 contracts entered into in accordance with this chapter and sections  
 25 2304a to 2304d of title 10; and

26 (2) steps that agencies should take in entering into and admin-  
 27 istering multiple award task and delivery order contracts to ensure  
 28 compliance with the requirement in—

29 (A) section 11312 of title 40 for capital planning and invest-  
 30 ment control in purchases of information technology products and  
 31 services;

32 (B) section 4106(c) of this title and section 2304e(b) of title 10  
 33 to ensure that all contractors are afforded a fair opportunity to  
 34 be considered for the award of task and delivery orders; and

35 (C) section 4106(d) of this title and section 2304e(c) of title 10  
 36 for a statement of work in each task or delivery order issued that  
 37 clearly specifies all tasks to be performed or property to be deliv-  
 38 ered under the order.

39 (c) FEDERAL SUPPLY SCHEDULES PROGRAM.—The Administrator for  
 40 Federal Procurement Policy shall consult with the Administrator of General  
 41 Services to assess the effectiveness of the multiple awards schedule program

1 of the General Services Administration referred to in section 152(3) of this  
2 title that is administered as the Federal Supply Schedules program. The as-  
3 sessment shall include examination of—

4 (1) the administration of the program by the Administrator of Gen-  
5 eral Services; and

6 (2) the ordering and program practices followed by Federal customer  
7 agencies in using schedules established under the program.

#### 8 **§ 4105. Advisory and assistance services**

9 (a) DEFINITION.—In this section, the term “advisory and assistance serv-  
10 ices” has the same meaning given that term in section 1105(g) of title 31.

11 (b) AUTHORITY TO AWARD.—

12 (1) IN GENERAL.—Subject to the requirements of this section, sec-  
13 tion 4106 of this title, and other applicable law, the head of an execu-  
14 tive agency may enter into a task order contract for procurement of  
15 advisory and assistance services.

16 (2) ONLY UNDER THIS SECTION.—The head of an executive agency  
17 may enter into a task order contract for advisory and assistance serv-  
18 ices only under this section.

19 (c) LIMITATION ON CONTRACT PERIOD.—The period of a task order con-  
20 tract entered into under this section, including all periods of extensions of  
21 the contract under options, modifications, or otherwise, may not exceed 5  
22 years unless a longer period is specifically authorized in a law that is appli-  
23 cable to the contract.

24 (d) CONTENT OF NOTICE.—The notice required by section 1707 of this  
25 title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall  
26 reasonably and fairly describe the general scope, magnitude, and duration  
27 of the proposed task order contract in a manner that would reasonably en-  
28 able a potential offeror to decide whether to request the solicitation and con-  
29 sider submitting an offer.

30 (e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

31 (1) SOLICITATION.—The solicitation shall include the information  
32 (regarding services) described in section 4103(b) of this title.

33 (2) CONTRACT.—A task order contract entered into under this sec-  
34 tion shall contain the same information that is required by paragraph  
35 (1) to be included in the solicitation of offers for that contract.

36 (f) MULTIPLE AWARDS.—

37 (1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one  
38 solicitation, the head of an executive agency may award separate task  
39 order contracts under this section for the same or similar services to  
40 2 or more sources if the solicitation states that the head of the execu-  
41 tive agency has the option to do so.

1           (2) CONTENT OF SOLICITATION.—In the case of a task order con-  
2 tract for advisory and assistance services to be entered into under this  
3 section, if the contract period is to exceed 3 years and the contract  
4 amount is estimated to exceed \$10,000,000 (including all options), the  
5 solicitation shall—

6           (A) provide for a multiple award authorized under paragraph  
7 (1); and

8           (B) include a statement that the head of the executive agency  
9 may also elect to award only one task order contract if the head  
10 of the executive agency determines in writing that only one of the  
11 offerors is capable of providing the services required at the level  
12 of quality required.

13           (3) NONAPPLICATION.—Paragraph (2) does not apply in the case of  
14 a solicitation for which the head of the executive agency concerned de-  
15 termines in writing that, because the services required under the con-  
16 tract are unique or highly specialized, it is not practicable to award  
17 more than one contract.

18 (g) CONTRACT MODIFICATIONS.—

19           (1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT  
20 ONLY BY MODIFICATION OF CONTRACT.—A task order may not in-  
21 crease the scope, period, or maximum value of the task order contract  
22 under which the order is issued. The scope, period, or maximum value  
23 of the contract may be increased only by modification of the contract.

24           (2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures  
25 other than competitive procedures is authorized by an exception in sec-  
26 tion 3303(a) of this title and approved in accordance with section  
27 3303(d) of this title, competitive procedures shall be used for making  
28 such a modification.

29           (3) NOTICE.—Notice regarding the modification shall be provided in  
30 accordance with section 1707 of this title and section 8(e) of the Small  
31 Business Act (15 U.S.C. 637(e)).

32 (h) CONTRACT EXTENSIONS.—

33           (1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the  
34 limitation on the contract period set forth in subsection (c) or in a so-  
35 licitation or contract pursuant to subsection (f), a contract entered into  
36 by the head of an executive agency under this section may be extended  
37 on a sole-source basis for a period not exceeding 6 months if the head  
38 of the executive agency determines that—

39           (A) the award of a follow-on contract has been delayed by cir-  
40 cumstances that were not reasonably foreseeable at the time the  
41 initial contract was entered into; and

1 (B) the extension is necessary to ensure continuity of the receipt  
 2 of services pending the award of, and commencement of perform-  
 3 ance under, the follow-on contract.

4 (2) LIMIT OF ONE EXTENSION.—A task order contract may be ex-  
 5 tended under paragraph (1) only once and only in accordance with the  
 6 limitations and requirements of this subsection.

7 (i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not  
 8 apply to a contract for the acquisition of property or services that includes  
 9 acquisition of advisory and assistance services if the head of the executive  
 10 agency entering into the contract determines that, under the contract, advi-  
 11 sory and assistance services are necessarily incident to, and not a significant  
 12 component of, the contract.

13 **§ 4106. Orders**

14 (a) APPLICATION.—This section applies to task and delivery order con-  
 15 tracts entered into under sections 4103 and 4105 of this title.

16 (b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following  
 17 actions are not required for issuance of a task or delivery order under a  
 18 task or delivery order contract:

19 (1) A separate notice for the order under section 1707 of this title  
 20 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

21 (2) Except as provided in subsection (c), a competition (or a waiver  
 22 of competition approved in accordance with section 3303(d) of this  
 23 title) that is separate from that used for entering into the contract.

24 (c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are award-  
 25 ed under section 4103(d)(1)(B) or 4105(f) of this title, all contractors  
 26 awarded the contracts shall be provided a fair opportunity to be considered,  
 27 pursuant to procedures set forth in the contracts, for each task or delivery  
 28 order in excess of \$2,500 that is to be issued under any of the contracts,  
 29 unless—

30 (1) the executive agency's need for the services or property ordered  
 31 is of such unusual urgency that providing the opportunity to all of  
 32 those contractors would result in unacceptable delays in fulfilling that  
 33 need;

34 (2) only one of those contractors is capable of providing the services  
 35 or property required at the level of quality required because the services  
 36 or property ordered are unique or highly specialized;

37 (3) the task or delivery order should be issued on a sole-source basis  
 38 in the interest of economy and efficiency because it is a logical follow-  
 39 on to a task or delivery order already issued on a competitive basis;  
 40 or

1 (4) it is necessary to place the order with a particular contractor to  
2 satisfy a minimum guarantee.

3 (d) STATEMENT OF WORK.—A task or delivery order shall include a  
4 statement of work that clearly specifies all tasks to be performed or prop-  
5 erty to be delivered under the order.

6 (e) PROTESTS.—A protest is not authorized in connection with the  
7 issuance or proposed issuance of a task or delivery order except for a pro-  
8 test on the ground that the order increases the scope, period, or maximum  
9 value of the contract under which the order is issued.

10 (f) TASK AND DELIVERY ORDER OMBUDSMAN.—

11 (1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The  
12 head of each executive agency who awards multiple task or delivery  
13 order contracts under section 4103(d)(1)(B) or 4105(f) of this title  
14 shall appoint or designate a task and delivery order ombudsman who  
15 shall be responsible for reviewing complaints from the contractors on  
16 those contracts and ensuring that all of the contractors are afforded  
17 a fair opportunity to be considered for task or delivery orders when re-  
18 quired under subsection (e).

19 (2) WHO IS ELIGIBLE.—The task and delivery order ombudsman  
20 shall be a senior agency official who is independent of the contracting  
21 officer for the contracts and may be the executive agency’s advocate  
22 for competition.

## 23 **CHAPTER 43—ALLOWABLE COSTS**

Sec.

4301. Definitions.

4302. Adjustment of threshold amount of covered contract.

4303. Effect of submission of unallowable costs.

4304. Specific costs not allowable.

4305. Required regulations.

4306. Applicability of regulations to subcontractors.

4307. Contractor certification.

4308. Penalties for submission of cost known to be unallowable.

4309. Burden of proof on contractor.

4310. Proceeding costs not allowable.

### 24 **§ 4301. Definitions**

25 In this chapter:

26 (1) COMPENSATION.—The term “compensation”, for a fiscal year,  
27 means the total amount of wages, salary, bonuses, and deferred com-  
28 pensation for the fiscal year, whether paid, earned, or otherwise accru-  
29 ing, as recorded in an employer’s cost accounting records for the fiscal  
30 year.

31 (2) COVERED CONTRACT.—The term “covered contract” means a  
32 contract for an amount in excess of \$500,000 that is entered into by  
33 an executive agency, except that the term does not include a fixed-price

1 contract without cost incentives or any firm fixed-price contract for the  
2 purchase of commercial items.

3 (3) FISCAL YEAR.—The term “fiscal year” means a fiscal year estab-  
4 lished by a contractor for accounting purposes.

5 (4) SENIOR EXECUTIVE.—The term “senior executive”, with respect  
6 to a contractor, means the 5 most highly compensated employees in  
7 management positions at each home office and each segment of the  
8 contractor.

9 **§ 4302. Adjustment of threshold amount of covered contract**

10 Effective on October 1 of each year that is divisible by 5, the amount  
11 set forth in section 4301(2) of this title shall be adjusted to the equivalent  
12 amount in constant fiscal year 1994 dollars. An adjusted amount that is  
13 not evenly divisible by \$50,000 shall be rounded to the nearest multiple of  
14 \$50,000. If an amount is evenly divisible by \$25,000 but is not evenly divis-  
15 ible by \$50,000, the amount shall be rounded to the next higher multiple  
16 of \$50,000.

17 **§ 4303. Effect of submission of unallowable costs**

18 (a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULA-  
19 TION COST PRINCIPLE.—An executive agency shall require that a covered  
20 contract provide that if the contractor submits to the executive agency a  
21 proposal for settlement of indirect costs incurred by the contractor for any  
22 period after those costs have been accrued and if that proposal includes the  
23 submission of a cost that is unallowable because the cost violates a cost  
24 principle in the Federal Acquisition Regulation or an executive agency sup-  
25 plement to the Federal Acquisition Regulation, the cost shall be disallowed.

26 (b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

27 (1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency de-  
28 termines that a cost submitted by a contractor in its proposal for set-  
29 tlement is expressly unallowable under a cost principle referred to in  
30 subsection (a) that defines the allowability of specific selected costs, the  
31 executive agency shall assess a penalty against the contractor in an  
32 amount equal to—

33 (A) the amount of the disallowed cost allocated to covered con-  
34 tracts for which a proposal for settlement of indirect costs has  
35 been submitted; plus

36 (B) interest (to be computed based on provisions in the Federal  
37 Acquisition Regulation) to compensate the Federal Government  
38 for the use of the amount which a contractor has been paid in ex-  
39 cess of the amount to which the contractor was entitled.

40 (2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL  
41 SUBMITTED.—If the executive agency determines that a proposal for

1 settlement of indirect costs submitted by a contractor includes a cost  
 2 determined to be unallowable in the case of that contractor before the  
 3 submission of that proposal, the executive agency shall assess a penalty  
 4 against the contractor in an amount equal to 2 times the amount of  
 5 the disallowed cost allocated to covered contracts for which a proposal  
 6 for settlement of indirect costs has been submitted.

7 (e) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall pro-  
 8 vide for a penalty under subsection (b) to be waived in the case of a con-  
 9 tractor’s proposal for settlement of indirect costs when—

10 (1) the contractor withdraws the proposal before the formal initiation  
 11 of an audit of the proposal by the Federal Government and resubmits  
 12 a revised proposal;

13 (2) the amount of unallowable costs subject to the penalty is insig-  
 14 nificant; or

15 (3) the contractor demonstrates, to the contracting officer’s satisfac-  
 16 tion, that—

17 (A) it has established appropriate policies and personnel train-  
 18 ing and an internal control and review system that provide assur-  
 19 ances that unallowable costs subject to penalties are precluded  
 20 from being included in the contractor’s proposal for settlement of  
 21 indirect costs; and

22 (B) the unallowable costs subject to the penalty were inadvert-  
 23 ently incorporated into the proposal.

24 (d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of  
 25 an executive agency under subsection (a) or (b)—

26 (1) shall be considered a final decision for the purposes of section  
 27 6903 of this title; and

28 (2) is appealable in the manner provided in section 6904(a) of this  
 29 title.

30 **§ 4304. Specific costs not allowable**

31 (a) SPECIFIC COSTS.—The following costs are not allowable under a cov-  
 32 ered contract:

33 (1) Costs of entertainment, including amusement, diversion, and so-  
 34 cial activities, and any costs directly associated with those costs (such  
 35 as tickets to shows or sports events, meals, lodging, rentals, transpor-  
 36 tation, and gratuities).

37 (2) Costs incurred to influence (directly or indirectly) legislative ac-  
 38 tion on any matter pending before Congress, a State legislature, or a  
 39 legislative body of a political subdivision of a State.

40 (3) Costs incurred in defense of any civil or criminal fraud pro-  
 41 ceeding or similar proceeding (including filing of any false certification)

1 brought by the Federal Government where the contractor is found lia-  
2 ble or had pleaded nolo contendere to a charge of fraud or similar pro-  
3 ceeding (including filing of a false certification).

4 (4) Payments of fines and penalties resulting from violations of, or  
5 failure to comply with, Federal, State, local, or foreign laws and regula-  
6 tions, except when incurred as a result of compliance with specific  
7 terms and conditions of the contract or specific written instructions  
8 from the contracting officer authorizing in advance those payments in  
9 accordance with applicable provisions of the Federal Acquisition Regu-  
10 lation.

11 (5) Costs of membership in any social, dining, or country club or or-  
12 ganization.

13 (6) Costs of alcoholic beverages.

14 (7) Contributions or donations, regardless of the recipient.

15 (8) Costs of advertising designed to promote the contractor or its  
16 products.

17 (9) Costs of promotional items and memorabilia, including models,  
18 gifts, and souvenirs.

19 (10) Costs for travel by commercial aircraft that exceed the amount  
20 of the standard commercial fare.

21 (11) Costs incurred in making any payment (commonly known as a  
22 “golden parachute payment”) that is—

23 (A) in an amount in excess of the normal severance pay paid  
24 by the contractor to an employee on termination of employment;  
25 and

26 (B) paid to the employee contingent on, and following, a change  
27 in management control over, or ownership of, the contractor or a  
28 substantial portion of the contractor’s assets.

29 (12) Costs of commercial insurance that protects against the costs  
30 of the contractor for correction of the contractor’s own defects in mate-  
31 rials or workmanship.

32 (13) Costs of severance pay paid by the contractor to foreign nation-  
33 als employed by the contractor under a service contract performed out-  
34 side the United States, to the extent that the amount of severance pay  
35 paid in any case exceeds the amount paid in the industry involved  
36 under the customary or prevailing practice for firms in that industry  
37 providing similar services in the United States, as determined under  
38 the Federal Acquisition Regulation.

39 (14) Costs of severance pay paid by the contractor to a foreign na-  
40 tional employed by the contractor under a service contract performed  
41 in a foreign country if the termination of the employment of the foreign

1 national is the result of the closing of, or the curtailment of activities  
 2 at, a Federal Government facility in that country at the request of the  
 3 government of that country.

4 (15) Costs incurred by a contractor in connection with any criminal,  
 5 civil, or administrative proceeding commenced by the Federal Govern-  
 6 ment or a State, to the extent provided in section 4310 of this title.

7 (16) Costs of compensation of senior executives of contractors for a  
 8 fiscal year, regardless of the contract funding source, to the extent that  
 9 the compensation exceeds the benchmark compensation amount deter-  
 10 mined applicable for the fiscal year by the Administrator under section  
 11 1127 of this title.

12 (b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATION-  
 13 ALS.—

14 (1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal  
 15 Acquisition Regulation and subject to the availability of appropriations,  
 16 an executive agency, in awarding a covered contract, may waive the ap-  
 17 plication of paragraphs (13) and (14) of subsection (a) to that contract  
 18 if the executive agency determines that—

19 (A) the application of those provisions to that contract would  
 20 adversely affect the continuation of a program, project, or activity  
 21 that provides significant support services for employees of the ex-  
 22 ecutive agency posted outside the United States;

23 (B) the contractor has taken (or has established plans to take)  
 24 appropriate actions within the contractor's control to minimize the  
 25 amount and number of incidents of the payment of severance pay  
 26 by the contractor to employees under the contract who are foreign  
 27 nationals; and

28 (C) the payment of severance pay is necessary to comply with  
 29 a law that is generally applicable to a significant number of busi-  
 30 nesses in the country in which the foreign national receiving the  
 31 payment performed services under the contract or is necessary to  
 32 comply with a collective bargaining agreement.

33 (2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An ex-  
 34 ecutive agency shall include in the solicitation for a covered contract  
 35 a statement indicating—

36 (A) that a waiver has been granted under paragraph (1) for the  
 37 contract; or

38 (B) whether the executive agency will consider granting a waiver  
 39 and, if the executive agency will consider granting a waiver, the  
 40 criteria to be used in granting the waiver.

1 (3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—

2 An executive agency shall make the final determination whether to  
3 grant a waiver under paragraph (1) with respect to a covered contract  
4 before award of the contract.

5 (c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND  
6 QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation  
7 implementing this chapter may establish appropriate definitions, exclusions,  
8 limitations, and qualifications. A submission by a contractor of costs that  
9 are incurred by the contractor and that are claimed to be allowable under  
10 Department of Energy management and operating contracts shall be consid-  
11 ered a proposal for settlement of indirect costs incurred by the contractor  
12 for any period after those costs have been accrued.

13 **§ 4305. Required regulations**

14 (a) IN GENERAL.—The Federal Acquisition Regulation shall contain pro-  
15 visions on the allowability of contractor costs. Those provisions shall define  
16 in detail and in specific terms the costs that are unallowable, in whole or  
17 in part, under covered contracts.

18 (b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the  
19 cost principles 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 ac-  
25 tion on regulatory and contract matters (other than costs incurred in  
26 regard to contract 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.

38 (17) Conventions.

39 (c) ADDITIONAL REQUIREMENTS.—

1 (1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal  
2 Acquisition Regulation shall require that a contracting officer not re-  
3 solve any questioned costs until the contracting officer has obtained—

4 (A) adequate documentation of those costs; and

5 (B) the opinion of the contract auditor on the allowability of  
6 those costs.

7 (2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition  
8 Regulation shall provide that, to the maximum extent practicable, a  
9 contract auditor be present at any negotiation or meeting with the con-  
10 tractor regarding a determination of the allowability of indirect costs  
11 of the contractor.

12 (3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUES-  
13 TIONED COSTS.—The Federal Acquisition Regulation shall require that  
14 all categories of costs designated in the report of a contract auditor as  
15 questioned with respect to a proposal for settlement be resolved in a  
16 manner so that the amount of the individual questioned costs that are  
17 paid will be reflected in the settlement.

18 **§ 4306. Applicability of regulations to subcontractors**

19 The regulations referred to in sections 4304 and 4305(a) and (b) of this  
20 title shall require prime contractors of a covered contract, to the maximum  
21 extent practicable, to apply the provisions of those regulations to all sub-  
22 contractors of the covered contract.

23 **§ 4307. Contractor certification**

24 (a) CONTENT AND FORM.—A proposal for settlement of indirect costs ap-  
25 plicable to a covered contract shall include a certification by an official of  
26 the contractor that, to the best of the certifying official's knowledge and be-  
27 lief, all indirect costs included in the proposal are allowable. The certifi-  
28 cation shall be in a form prescribed in the Federal Acquisition Regulation.

29 (b) WAIVER.—An executive agency may, in an exceptional case, waive the  
30 requirement for certification under subsection (a) in the case of a contract  
31 if the agency—

32 (1) determines that it would be in the interest of the Federal Gov-  
33 ernment to waive the certification; and

34 (2) states in writing the reasons for the determination and makes  
35 the determination available to the public.

36 **§ 4308. Penalties for submission of cost known to be unal-  
37 lowable**

38 The submission to an executive agency of a proposal for settlement of  
39 costs for any period after those costs have been accrued that includes a cost  
40 that is expressly specified by statute or regulation as being unallowable,

1 with the knowledge that the cost is unallowable, is subject to section 287  
2 of title 18 and section 3729 of title 31.

3 **§ 4309. Burden of proof on contractor**

4 In a proceeding before a board of contract appeals, the United States  
5 Court of Federal Claims, or any other Federal court in which the reason-  
6 ableness of indirect costs for which a contractor seeks reimbursement from  
7 the Federal Government is in issue, the burden of proof is on the contractor  
8 to establish that those costs are reasonable.

9 **§ 4310. Proceeding costs not allowable**

10 (a) DEFINITIONS.—In this section:

11 (1) COSTS.—The term “costs”, with respect to a proceeding, means  
12 all costs incurred by a contractor, whether before or after the com-  
13 mencement of the proceeding, including—

14 (A) administrative and clerical expenses;

15 (B) the cost of legal services, including legal services performed  
16 by an employee of the contractor;

17 (C) the cost of the services of accountants and consultants re-  
18 tained by the contractor; and

19 (D) the pay of directors, officers, and employees of the con-  
20 tractor for time devoted by those directors, officers, and employees  
21 to the proceeding.

22 (2) PENALTY.—The term “penalty” does not include restitution, re-  
23 imbursement, or compensatory damages.

24 (3) PROCEEDING.—The term “proceeding” includes an investigation.

25 (b) IN GENERAL.—Except as otherwise provided in this section, costs in-  
26 curred by a contractor in connection with a criminal, civil, or administrative  
27 proceeding commenced by the Federal Government or a State are not allow-  
28 able as reimbursable costs under a covered contract if the proceeding—

29 (1) relates to a violation of, or failure to comply with, a Federal or  
30 State statute or regulation; and

31 (2) results in a disposition described in subsection (c).

32 (c) COVERED DISPOSITIONS.—A disposition referred to in subsection  
33 (b)(2) is any of the following:

34 (1) In a criminal proceeding, a conviction (including a conviction  
35 pursuant to a plea of nolo contendere) by reason of the violation or  
36 failure referred to in subsection (b).

37 (2) In a civil or administrative proceeding involving an allegation of  
38 fraud or similar misconduct, a determination of contractor liability on  
39 the basis of the violation or failure referred to in subsection (b).

1           (3) In any civil or administrative proceeding, the imposition of a  
2 monetary penalty by reason of the violation or failure referred to in  
3 subsection (b).

4           (4) A final decision to do any of the following, by reason of the viola-  
5 tion or failure referred to in subsection (b):

6                 (A) Debar or suspend the contractor.

7                 (B) Rescind or void the contract.

8                 (C) Terminate the contract for default.

9           (5) A disposition of the proceeding by consent or compromise if the  
10 disposition could have resulted in a disposition described in paragraph  
11 (1), (2), (3), or (4).

12           (d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING  
13 COMMENCED BY FEDERAL GOVERNMENT.—In the case of a proceeding referred  
14 to in subsection (b) that is commenced by the Federal Government  
15 and is resolved by consent or compromise pursuant to an agreement entered  
16 into by a contractor and the Federal Government, the costs incurred by the  
17 contractor in connection with the proceeding that are otherwise not allow-  
18 able as reimbursable costs under subsection (b) may be allowed to the extent  
19 specifically provided in that agreement.

20           (e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PRO-  
21 CEEDING COMMENCED BY STATE.—In the case of a proceeding referred to  
22 in subsection (b) that is commenced by a State, the executive agency that  
23 awarded the covered contract involved in the proceeding may allow the costs  
24 incurred by the contractor in connection with the proceeding as reimburs-  
25 able costs if the executive agency determines, in accordance with the Fed-  
26 eral Acquisition Regulation, that the costs were incurred as a result of—

27                 (1) a specific term or condition of the contract; or

28                 (2) specific written instructions of the executive agency.

29           (f) OTHER ALLOWABLE COSTS.—

30                 (1) IN GENERAL.—Except as provided in paragraph (3), costs in-  
31 curred by a contractor in connection with a criminal, civil, or adminis-  
32 trative proceeding commenced by the Federal Government or a State  
33 in connection with a covered contract may be allowed as reimbursable  
34 costs under the contract if the costs are not disallowable under sub-  
35 section (b), but only to the extent provided in paragraph (2).

36                 (2) AMOUNT OF ALLOWABLE COSTS.—

37                         (A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs al-  
38 lowable under paragraph (1) in any case may not exceed the  
39 amount equal to 80 percent of the amount of the costs incurred,  
40 to the extent that the costs are determined to be otherwise allow-  
41 able and allocable under the Federal Acquisition Regulation.

1 (B) CONTENT OF REGULATIONS.—Regulations issued for the  
 2 purpose of subparagraph (A) shall provide for appropriate consid-  
 3 eration of the complexity of procurement litigation, generally ac-  
 4 cepted principles governing the award of legal fees in civil actions  
 5 involving the Federal Government as a party, and other factors as  
 6 may be appropriate.

7 (3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—  
 8 In the case of a proceeding referred to in paragraph (1), contractor  
 9 costs otherwise allowable as reimbursable costs under this subsection  
 10 are not allowable if—

11 (A) the proceeding involves the same contractor misconduct al-  
 12 leged as the basis of another criminal, civil, or administrative pro-  
 13 ceeding; and

14 (B) the costs of the other proceeding are not allowable under  
 15 subsection (b).

## 16 **CHAPTER 45—CONTRACT FINANCING**

Sec.

4501. Authority of executive agency.

4502. Payment.

4503. Security for advance payments.

4504. Conditions for progress payments.

4505. Payments for commercial items.

4506. Action in case of fraud.

### 17 **§ 4501. Authority of executive agency**

18 An executive agency may—

19 (1) make advance, partial, progress or other payments under con-  
 20 tracts for property or services made by the agency; and

21 (2) insert in solicitations for procurement of property or services a  
 22 provision limiting to small business concerns advance or progress pay-  
 23 ments.

### 24 **§ 4502. Payment**

25 (a) BASIS FOR PAYMENT.—When practicable, payments under section  
 26 4501 of this title shall be made on any of the following bases:

27 (1) Performance measured by objective, quantifiable methods such as  
 28 delivery of acceptable items, work measurement, or statistical process  
 29 controls.

30 (2) Accomplishment of events defined in the program management  
 31 plan.

32 (3) Other quantifiable measures of results.

33 (b) PAYMENT AMOUNT.—Payments made under section 4501 of this title  
 34 may not exceed the unpaid contract price.

### 35 **§ 4503. Security for advance payments**

36 Advance payments under section 4501 of this title may be made only on  
 37 adequate security and a determination by the agency head that to do so

1 would be in the public interest. The security may be in the form of a lien  
2 in favor of the Federal Government on the property contracted for, on the  
3 balance in an account in which the payments are deposited, and on such  
4 of the property acquired for performance of the contract as the parties may  
5 agree. This lien shall be paramount to all other liens and is effective imme-  
6 diately upon the first advancement of funds without filing, notice, or any  
7 other action by the Federal Government.

8 **§ 4504. Conditions for progress payments**

9 (a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall  
10 ensure that a payment for work in progress (including materials, labor, and  
11 other items) under a contract of an executive agency that provides for those  
12 payments is commensurate with the work accomplished that meets stand-  
13 ards established under the contract. The contractor shall provide informa-  
14 tion and evidence the executive agency determines is necessary to permit the  
15 executive agency to carry out this subsection.

16 (b) LIMITATION.—The executive agency shall ensure that progress pay-  
17 ments referred to in subsection (a) are not made for more than 80 percent  
18 of the work accomplished under the contract as long as the executive agency  
19 has not made the contractual terms, specifications, and price definite.

20 (c) APPLICATION.—This section applies to a contract in an amount great-  
21 er than \$25,000.

22 **§ 4505. Payments for commercial items**

23 (a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section  
24 4501 of this title for commercial items may be made under terms and condi-  
25 tions that the head of the executive agency determines are appropriate or  
26 customary in the commercial marketplace and are in the best interests of  
27 the Federal Government.

28 (b) SECURITY FOR PAYMENTS.—The head of the executive agency shall  
29 obtain adequate security for the payments. If the security is in the form  
30 of a lien in favor of the Federal Government, the lien is paramount to all  
31 other liens and is effective immediately on the first payment, without filing,  
32 notice, or other action by the Federal Government.

33 (c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made  
34 under section 4501 of this title for commercial items may include payments,  
35 in a total amount not more than 15 percent of the contract price, in ad-  
36 vance of any performance of work under the contract.

37 (d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sec-  
38 tions 4503 and 4504 of this title need not be applied if they would be incon-  
39 sistent, as determined by the head of the executive agency, with commercial  
40 terms and conditions pursuant to this section.

1    **§ 4506. Action in case of fraud**

2       (a) DEFINITION.—In this section, the term “remedy coordination official”, with respect to an executive agency, means the individual or entity  
3       in that executive agency who coordinates within that executive agency the  
4       administration of criminal, civil, administrative, and contractual remedies  
5       resulting from investigations of fraud or corruption related to procurement  
6       activities.  
7

8       (b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any  
9       case in which the remedy coordination official of an executive agency finds  
10      that there is substantial evidence that the request of a contractor for ad-  
11      vance, partial, or progress payment under a contract awarded by that execu-  
12      tive agency is based on fraud, the remedy coordination official shall rec-  
13      ommend that the executive agency reduce or suspend further payments to  
14      that contractor.

15      (c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an execu-  
16      tive agency receiving a recommendation under subsection (b) in the case of  
17      a contractor’s request for payment under a contract shall determine whether  
18      there is substantial evidence that the request is based on fraud. On making  
19      an affirmative determination, the head of the executive agency may reduce  
20      or suspend further payments to the contractor under the contract.

21      (d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduc-  
22      tion or suspension of payments by an executive agency under subsection (c)  
23      on the basis of fraud shall be reasonably commensurate with the anticipated  
24      loss to the Federal Government resulting from the fraud.

25      (e) WRITTEN JUSTIFICATION.—A written justification for each decision  
26      of the head of an executive agency whether to reduce or suspend payments  
27      under subsection (c), and for each recommendation received by the executive  
28      agency in connection with the decision, shall be prepared and be retained  
29      in the files of the executive agency.

30      (f) NOTICE.—The head of each executive agency shall prescribe proce-  
31      dures to ensure that, before the head of the executive agency decides to re-  
32      duce or suspend payments in the case of a contractor under subsection (c),  
33      the contractor is afforded notice of the proposed reduction or suspension  
34      and an opportunity to submit matters to the executive agency in response  
35      to the proposed reduction or suspension.

36      (g) REVIEW.—Not later than 180 days after the date on which the head  
37      of an executive agency reduces or suspends payments to a contractor under  
38      subsection (c), the remedy coordination official of the executive agency  
39      shall—

- 40           (1) review the determination of fraud on which the reduction or sus-  
41           pension is based; and



1 (1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or  
 2 decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title  
 3 shall be based on a written finding by the individual making the deter-  
 4 mination or decision. A finding under section 4503 or 4706(d)(2)(B)  
 5 shall set out facts and circumstances that support the determination  
 6 or decision.

7 (2) FINALITY.—Each finding referred to in paragraph (1) is final.

8 (3) MAINTAINING COPIES OF FINDINGS.—The head of an executive  
 9 agency shall maintain for a period of not less than 6 years a copy of  
 10 each finding referred to in paragraph (1) that is made by an individual  
 11 in that executive agency. The period begins on the date of the deter-  
 12 mination or decision to which the finding relates.

### 13 **§ 4702. Prohibition on release of contractor proposals**

14 (a) DEFINITION.—In this section, the term “proposal” means a proposal,  
 15 including a technical, management, or cost proposal, submitted by a con-  
 16 tractor in response to the requirements of a solicitation for a competitive  
 17 proposal.

18 (b) PROHIBITION.—A proposal in the possession or control of an execu-  
 19 tive agency may not be made available to any person under section 552 of  
 20 title 5.

21 (c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that  
 22 is set forth or incorporated by reference in a contract entered into between  
 23 the agency and the contractor that submitted the proposal.

### 24 **§ 4703. Validation of proprietary data restrictions**

25 (a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—  
 26 A contract for property or services entered into by an executive agency that  
 27 provides for the delivery of technical data shall provide that—

28 (1) a contractor or subcontractor at any tier shall be prepared to  
 29 furnish to the contracting officer a written justification for any restric-  
 30 tion the contractor or subcontractor asserts on the right of the Federal  
 31 Government to use the data; and

32 (2) the contracting officer may review the validity of a restriction the  
 33 contractor or subcontractor asserts under the contract on the right of  
 34 the Federal Government to use technical data furnished to the Federal  
 35 Government under the contract if the contracting officer determines  
 36 that reasonable grounds exist to question the current validity of the as-  
 37 serted restriction and that the continued adherence to the asserted re-  
 38 striction by the Federal Government would make it impracticable to  
 39 procure the item competitively at a later time.

40 (b) CHALLENGE OF RESTRICTION.—If after a review the contracting offi-  
 41 cer determines that a challenge to the asserted restriction is warranted, the

1 contracting officer shall provide written notice to the contractor or subcon-  
2 tractor asserting the restriction. The notice shall state—

3 (1) the grounds for challenging the asserted restriction; and

4 (2) the requirement for a response within 60 days justifying the cur-  
5 rent validity of the asserted restriction.

6 (c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor  
7 asserting a restriction subject to this section submits to the contracting offi-  
8 cer a written request showing the need for additional time to comply with  
9 the requirement to justify the current validity of the asserted restriction, the  
10 contracting officer shall provide appropriate additional time to adequately  
11 permit the justification to be submitted.

12 (d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives  
13 notices of challenges to restrictions on technical data from more than one  
14 contracting officer, and notifies each contracting officer of the existence of  
15 more than one challenge, the contracting officer initiating the earliest chal-  
16 lenge, after consultation with the party asserting the restriction and the  
17 other contracting officers, shall formulate a schedule of responses to each  
18 of the challenges that will afford the party asserting the restriction with an  
19 equitable opportunity to respond to each challenge.

20 (e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

21 (1) NO RESPONSE SUBMITTED.—The contracting officer shall issue  
22 a decision pertaining to the validity of the asserted restriction if the  
23 contractor or subcontractor does not submit a response under sub-  
24 section (b).

25 (2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justifica-  
26 tion submitted in response to the notice provided pursuant to sub-  
27 section (b), a contracting officer shall issue a decision or notify the  
28 party asserting the restriction of the time within which a decision will  
29 be issued.

30 (f) CLAIM DEEMED CLAIM WITHIN CHAPTER 69.—A claim pertaining to  
31 the validity of the asserted restriction that is submitted in writing to a con-  
32 tracting officer by a contractor or subcontractor at any tier is deemed to  
33 be a claim within the meaning of chapter 69 of this title.

34 (g) FINAL DISPOSITION OF CHALLENGE.—

35 (1) CHALLENGE IS SUSTAINED.—If the contracting officer's chal-  
36 lenge to the restriction on the right of the Federal Government to use  
37 technical data is sustained on final disposition—

38 (A) the restriction is cancelled; and

39 (B) if the asserted restriction is found not to be substantially  
40 justified, the contractor or subcontractor, as appropriate, is liable  
41 to the Federal Government for payment of the cost to the Federal

1 Government of reviewing the asserted restriction and the fees and  
 2 other expenses (as defined in section 2412(d)(2)(A) of title 28) in-  
 3 curred by the Federal Government in challenging the asserted re-  
 4 striction, unless special circumstances would make the payment  
 5 unjust.

6 (2) CHALLENGE NOT SUSTAINED.—If the contracting officer’s chal-  
 7 lenge to the restriction on the right of the Federal Government to use  
 8 technical data is not sustained on final disposition, the Federal Govern-  
 9 ment—

10 (A) continues to be bound by the restriction; and

11 (B) is liable for payment to the party asserting the restriction  
 12 for fees and other expenses (as defined in section 2412(d)(2)(A)  
 13 of title 28) incurred by the party asserting the restriction in de-  
 14 fending the asserted restriction if the challenge by the Federal  
 15 Government is found not to be made in good faith.

16 **§ 4704. Prohibition of contractors limiting subcontractor**  
 17 **sales directly to Federal Government**

18 (a) CONTRACT RESTRICTIONS.—Each contract for the purchase of prop-  
 19 erty or services made by an executive agency shall provide that the con-  
 20 tractor will not—

21 (1) enter into an agreement with a subcontractor under the contract  
 22 that has the effect of unreasonably restricting sales by the subcon-  
 23 tractor directly to the Federal Government of any item or process (in-  
 24 cluding computer software) made or furnished by the subcontractor  
 25 under the contract (or any follow-on production contract); or

26 (2) otherwise act to restrict unreasonably the ability of a subcon-  
 27 tractor to make sales described in paragraph (1) to the Federal Gov-  
 28 ernment.

29 (b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a  
 30 contractor from asserting rights it otherwise has under law.

31 (c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not  
 32 apply to a contract for an amount that is not greater than the simplified  
 33 acquisition threshold.

34 (d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO  
 35 OTHER PURCHASERS.—An agreement between the contractor in a contract  
 36 for the acquisition of commercial items and a subcontractor under the con-  
 37 tract that restricts sales by the subcontractor directly to persons other than  
 38 the contractor may not be considered to unreasonably restrict sales by that  
 39 subcontractor to the Federal Government in violation of the provision in-  
 40 cluded in the contract pursuant to subsection (a) if the agreement does not  
 41 result in the Federal Government being treated differently with regard to

1 the restriction than any other prospective purchaser of the commercial items  
2 from that subcontractor.

3 **§ 4705. Protection of contractor employees from reprisal for**  
4 **disclosure of certain information**

5 (a) DEFINITIONS.—In this section:

6 (1) CONTRACT.—The term “contract” means a contract awarded by  
7 the head of an executive agency.

8 (2) CONTRACTOR.—The term “contractor” means a person awarded  
9 a contract with an executive agency.

10 (3) INSPECTOR GENERAL.—The term “Inspector General” means an  
11 Inspector General appointed under the Inspector General Act of 1978  
12 (5 App. U.S.C.).

13 (b) PROHIBITION OF REPRISALS.—An employee of a contractor may not  
14 be discharged, demoted, or otherwise discriminated against as a reprisal for  
15 disclosing to a Member of Congress or an authorized official of an executive  
16 agency or the Department of Justice information relating to a substantial  
17 violation of law related to a contract (including the competition for, or nego-  
18 tiation of, a contract).

19 (c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the  
20 individual has been subjected to a reprisal prohibited by subsection (b) may  
21 submit a complaint to the Inspector General of the executive agency. Unless  
22 the Inspector General determines that the complaint is frivolous, the Inspec-  
23 tor General shall investigate the complaint and, on completion of the inves-  
24 tigation, submit a report of the findings of the investigation to the indi-  
25 vidual, the contractor concerned, and the head of the agency. If the execu-  
26 tive agency does not have an Inspector General, the duties of the Inspector  
27 General under this section shall be performed by an official designated by  
28 the head of the executive agency.

29 (d) REMEDY AND ENFORCEMENT AUTHORITY.—

30 (1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head  
31 of an executive agency determines that a contractor has subjected an  
32 individual to a reprisal prohibited by subsection (b), the head of the  
33 executive agency may take one or more of the following actions:

34 (A) ABATEMENT.—Order the contractor to take affirmative ac-  
35 tion to abate the reprisal.

36 (B) REINSTATEMENT.—Order the contractor to reinstate the in-  
37 dividual to the position that the individual held before the reprisal,  
38 together with the compensation (including back pay), employment  
39 benefits, and other terms and conditions of employment that  
40 would apply to the individual in that position if the reprisal had  
41 not been taken.

1 (C) PAYMENT.—Order the contractor to pay the complainant an  
 2 amount equal to the aggregate amount of all costs and expenses  
 3 (including attorneys’ fees and expert witnesses’ fees) that the com-  
 4 plainant reasonably incurred for, or in connection with, bringing  
 5 the complaint regarding the reprisal, as determined by the head  
 6 of the executive agency.

7 (2) ENFORCEMENT ORDER.—When a contractor fails to comply with  
 8 an order issued under paragraph (1), the head of the executive agency  
 9 shall file an action for enforcement of the order in the United States  
 10 district court for a district in which the reprisal was found to have oc-  
 11 curred. In an action brought under this paragraph, the court may  
 12 grant appropriate relief, including injunctive relief and compensatory  
 13 and exemplary damages.

14 (3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected  
 15 or aggrieved by an order issued under paragraph (1) may obtain review  
 16 of the order’s conformance with this subsection, and regulations issued  
 17 to carry out this section, in the United States court of appeals for a  
 18 circuit in which the reprisal is alleged in the order to have occurred.  
 19 A petition seeking review must be filed no more than 60 days after the  
 20 head of the agency issues the order. Review shall conform to chapter  
 21 7 of title 5.

22 (e) SCOPE OF SECTION.—This section does not—

23 (1) authorize the discharge of, demotion of, or discrimination against  
 24 an employee for a disclosure other than a disclosure protected by sub-  
 25 section (b); or

26 (2) modify or derogate from a right or remedy otherwise available  
 27 to the employee.

28 **§ 4706. Examination of facilities and records of contractor**

29 (a) DEFINITION.—In this section, the term “records” includes books, doc-  
 30 uments, accounting procedures and practices, and other data, regardless of  
 31 type and regardless of whether the items are in written form, in the form  
 32 of computer data, or in any other form.

33 (b) AGENCY AUTHORITY.—

34 (1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of  
 35 an executive agency, acting through an authorized representative, may  
 36 inspect the plant and audit the records of—

37 (A) a contractor performing a cost-reimbursement, incentive,  
 38 time-and-materials, labor-hour, or price-redeterminable contract,  
 39 or any combination of those contracts, the executive agency makes  
 40 under this part; and

1 (B) a subcontractor performing a cost-reimbursement, incentive,  
 2 time-and-materials, labor-hour, or price-redeterminable sub-  
 3 contract, or any combination of those subcontracts, under a con-  
 4 tract referred to in subparagraph (A).

5 (2) EXAMINATION OF RECORDS.—The head of an executive agency,  
 6 acting through an authorized representative, may, for the purpose of  
 7 evaluating the accuracy, completeness, and currency of certified cost or  
 8 pricing data required to be submitted pursuant to chapter 35 of this  
 9 title with respect to a contract or subcontract, examine all records of  
 10 the contractor or subcontractor related to—

- 11 (A) the proposal for the contract or subcontract;
- 12 (B) the discussions conducted on the proposal;
- 13 (C) pricing of the contract or subcontract; or
- 14 (D) performance of the contract or subcontract.

15 (c) SUBPOENA POWER.—

16 (1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The  
 17 Inspector General of an executive agency appointed under section 3 or  
 18 8G of the Inspector General Act of 1978 (5 App. U.S.C.) or, on re-  
 19 quest of the head of an executive agency, the Director of the Defense  
 20 Contract Audit Agency (or any successor agency) of the Department  
 21 of Defense or the Inspector General of the General Services Adminis-  
 22 tration may require by subpoena the production of records of a con-  
 23 tractor, access to which is provided for that executive agency by sub-  
 24 section (b).

25 (2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph  
 26 (1), in the case of contumacy or refusal to obey, is enforceable by order  
 27 of an appropriate United States district court.

28 (3) AUTHORITY NOT DELEGABLE.—The authority provided by para-  
 29 graph (1) may not be delegated.

30 (4) REPORT.—In the year following a year in which authority pro-  
 31 vided in paragraph (1) is exercised for an executive agency, the head  
 32 of the executive agency shall submit to the Committee on Homeland  
 33 Security and Governmental Affairs of the Senate and the Committee  
 34 on Government Reform of the House of Representatives a report on  
 35 the exercise of the authority during the preceding year and the reasons  
 36 why the authority was exercised in any instance.

37 (d) AUTHORITY OF COMPTROLLER GENERAL.—

38 (1) IN GENERAL.—Except as provided in paragraph (2), each con-  
 39 tract awarded after using procedures other than sealed bid procedures  
 40 shall provide that the Comptroller General and representatives of the  
 41 Comptroller General may examine records of the contractor, or any of

1 its subcontractors, that directly pertain to, and involve transactions re-  
2 lating to, the contract or subcontract.

3 (2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—

4 Paragraph (1) does not apply to a contract or subcontract with a for-  
5 eign contractor or foreign subcontractor if the executive agency con-  
6 cerned determines, with the concurrence of the Comptroller General or  
7 the designee of the Comptroller General, that applying paragraph (1)  
8 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  
10 when—

11 (A) the contractor or subcontractor is—

12 (i) the government of a foreign country or an agency of  
13 that government; or

14 (ii) precluded by the laws of the country involved from  
15 making its records available for examination; and

16 (B) the executive agency determines, after taking into account  
17 the price and availability of the property and services from United  
18 States sources, that the public interest would be best served by not  
19 applying paragraph (1).

20 (3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not  
21 require a contractor or subcontractor to create or maintain a record  
22 that the contractor or subcontractor does not maintain in the ordinary  
23 course of business or pursuant to another law.

24 (e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An execu-  
25 tive agency may not perform an audit of indirect costs under a contract,  
26 subcontract, or modification before or after entering into the contract, sub-  
27 contract, or modification when the contracting officer determines that the  
28 objectives of the audit can reasonably be met by accepting the results of  
29 an audit that was conducted by another department or agency of the Fed-  
30 eral Government within one year preceding the date of the contracting offi-  
31 cer's determination.

32 (f) EXPIRATION OF AUTHORITY.—The authority of an executive agency  
33 under subsection (b) and the authority of the Comptroller General under  
34 subsection (d) shall expire 3 years after final payment under the contract  
35 or subcontract.

36 (g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not  
37 apply to the following contracts:

38 (1) Contracts for utility services at rates not exceeding those estab-  
39 lished to apply uniformly to the public, plus any applicable reasonable  
40 connection charge.

1 (2) A contract or subcontract that is not greater than the simplified  
2 acquisition threshold.

3 (h) ELECTRONIC FORM ALLOWED.—This section does not preclude a con-  
4 tractor from duplicating or storing original records in electronic form.

5 (i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not  
6 require a contractor or subcontractor to provide original records in an audit  
7 carried out pursuant to this section if the contractor or subcontractor pro-  
8 vides photographic or electronic images of the original records and meets  
9 the following requirements:

10 (1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or  
11 subcontractor has established procedures to ensure that the imaging  
12 process preserves the integrity, reliability, and security of the original  
13 records.

14 (2) INDEXING SYSTEM MAINTAINED.—The contractor or subcon-  
15 tractor maintains an effective indexing system to permit timely and  
16 convenient access to the imaged records.

17 (3) ORIGINAL RECORDS RETAINED.—The contractor or subcon-  
18 tractor retains the original records for a minimum of one year after  
19 imaging to permit periodic validation of the imaging systems.

20 **§ 4707. Remission of liquidated damages**

21 When a contract made on behalf of the Federal Government by the head  
22 of a Federal agency, or by an authorized officer of the agency, includes a  
23 provision for liquidated damages for delay, the Secretary of the Treasury  
24 on recommendation of the head of the agency may remit any part of the  
25 damages as the Secretary of the Treasury believes is just and equitable.

26 **§ 4708. Payment of reimbursable indirect costs in cost-type  
27 research and development contracts with edu-  
28 cational institutions**

29 A cost-type research and development contract (including a grant) with  
30 a university, college, or other educational institution may provide for pay-  
31 ment of reimbursable indirect costs on the basis of predetermined fixed-per-  
32 centage rates applied to the total of the reimbursable direct costs incurred  
33 or to an element of the total of the reimbursable direct costs incurred.

34 **§ 4709. Implementation of electronic commerce capability**

35 (a) ROLE OF HEAD OF EXECUTIVE AGENCY.—The head of each execu-  
36 tive agency shall implement the electronic commerce capability required by  
37 section 2301 of this title. In implementing the capability, the head of an  
38 executive agency shall consult with the Administrator.

39 (b) PROGRAM MANAGER.—The head of each executive agency shall des-  
40 ignate a program manager to implement the electronic commerce capability  
41 for the agency. The program manager reports directly to an official at a

1 level not lower than the senior procurement executive designated for the  
2 agency under section 1702(c) of this title.

3 **Subtitle II—Other Advertising and Contract**  
4 **Provisions**

Chapter	Sec.
<b>61. Advertising</b> .....	<b>6101</b>
<b>63. General Contract Provisions</b> .....	<b>6301</b>
<b>65. Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000.</b>	<b>6501</b>
<b>67. Service Contract Labor Standards</b> .....	<b>6701</b>
<b>69. Contract Disputes</b> .....	<b>6901</b>

5 **CHAPTER 61—ADVERTISING**

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

6 **§ 6101. Advertising requirement for Federal Government**  
7 **purchases and sales**

8 (a) DEFINITIONS.—In this section—

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

11 (2) FEDERAL GOVERNMENT.—The term “Federal Government” in-  
12 cludes the government of the District of Columbia.

13 (b) PURCHASES.—

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

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

20 (A) the amount involved in any one case does not exceed  
21 \$25,000;

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

24 (C) only one source of supply is available and the Federal Gov-  
25 ernment purchasing or contracting officer so certifies; or

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

28 (i) of a technical and professional nature; or

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

31 (c) SALES.—Except when otherwise authorized by law or when the rea-  
32 sonable value involved in any one case does not exceed \$500, sales and con-  
33 tracts of sale by the Federal Government are governed by the requirements  
34 of this section for advertising.

1 (d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—  
 2 For wholly owned Government corporations, this section applies only to ad-  
 3 ministrative transactions.

4 **§ 6102. Exceptions from advertising requirement**

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

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

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

17 (d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section  
 18 6101 of this title does not apply to the International Committee of Aerial  
 19 Legal Experts with respect to necessary stenographic and other services by  
 20 contract.

21 (e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equip-  
 22 ment and the procurement of services for all branches under the Architect  
 23 of the Capitol may be made in the open market according to common busi-  
 24 ness practice, without compliance with section 6101 of this title, when the  
 25 aggregate amount of the purchase or the service does not exceed \$25,000  
 26 in any instance.

27 (f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and  
 28 other forest products produced by Indian enterprises from forests on Indian  
 29 reservations may be sold under regulations the Secretary of the Interior pre-  
 30 scribes, without compliance with section 6101 of this title.

31 (g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not  
 32 apply to purchases and contracts for supplies or services for any office of  
 33 the House of Representatives.

34 (h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congres-  
 35 sional Budget Office may enter into agreements or contracts without regard  
 36 to section 6101 of this title.

37 **§ 6103. Opening of bids**

38 Whenever proposals for supplies have been solicited, the parties respond-  
 39 ing to the solicitation shall be notified of the time and place of the opening  
 40 of the bids, and be permitted to be present either in person or by attorney.

1 A record of each bid shall be made at the time and place of the opening  
2 of the bids.

3 **CHAPTER 63—GENERAL CONTRACT PROVISIONS**

Sec.

- 6301. Authorization requirement.
- 6302. Contracts for fuel made by Secretary of the Army.
- 6303. Certain contracts limited to appropriated amounts.
- 6304. Certain contracts limited to one-year term.
- 6305. Prohibition on transfer of contract and certain allowable assignments.
- 6306. Prohibition on Members of Congress making contracts with Federal Government.
- 6307. Contracts with Federal Government-owned establishments and availability of appropriations.
- 6308. Contracts for transportation of Federal Government securities.
- 6309. Honorable discharge certificate in lieu of birth certificate.

4 **§ 6301. Authorization requirement**

5 (a) IN GENERAL.—A contract or purchase on behalf of the Federal Gov-  
6 ernment shall not be made unless the contract or purchase is authorized by  
7 law or is under an appropriation adequate to its fulfillment.

8 (b) EXCEPTION.—

9 (1) DEFINITION.—In this subsection, the term “defined Secretary”  
10 means—

11 (A) the Secretary of Defense; or

12 (B) the Secretary of the Department in which the Coast Guard  
13 is operating when the Coast Guard is not operating as a service  
14 in the Navy.

15 (2) IN GENERAL.—Subsection (a) does not apply to a contract or  
16 purchase made by a defined Secretary for clothing, subsistence, forage,  
17 fuel, quarters, transportation, or medical and hospital supplies.

18 (3) CURRENT YEAR LIMITATION.—A contract or purchase made by  
19 a defined Secretary under this subsection may not exceed the neces-  
20 sities of the current year.

21 (4) REPORTS.—The defined Secretary shall immediately advise Con-  
22 gress when authority is exercised under this subsection. The defined  
23 Secretary shall report quarterly on the estimated obligations incurred  
24 pursuant to the authority granted in this subsection.

25 (c) SPECIAL RULE FOR PURCHASE OF LAND.—Land may not be pur-  
26 chased by the Federal Government unless the purchase is authorized by law.

27 **§ 6302. Contracts for fuel made by Secretary of the Army**

28 The Secretary of the Army, when the Secretary believes it is in the inter-  
29 est of the United States, may enter into contracts and incur obligations for  
30 fuel in sufficient quantities to meet the requirements for one year without  
31 regard to the current fiscal year. Amounts appropriated for the fiscal year  
32 in which the contract is made or amounts appropriated or which may be  
33 appropriated for the following fiscal year may be used to pay for supplies  
34 delivered under a contract made pursuant to this section.

1    **§ 6303. Certain contracts limited to appropriated amounts**

2       A contract to erect, repair, or furnish a public building, or to make any  
3    public improvement, shall not be made on terms requiring the Federal Gov-  
4    ernment to pay more than the amount specifically appropriated for the ac-  
5    tivity covered by the contract.

6    **§ 6304. Certain contracts limited to one-year term**

7       Except as otherwise provided, an executive department shall not make a  
8    contract for stationery or other supplies for a term longer than one year  
9    from the time the contract is made.

10   **§ 6305. Prohibition on transfer of contract and certain al-**  
11       **lowable assignments**

12       (a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party  
13    to whom the Federal Government gives a contract or order may not transfer  
14    the contract or order, or any interest in the contract or order, to another  
15    party. A purported transfer in violation of this subsection annuls the con-  
16    tract or order so far as the Federal Government is concerned, except that  
17    all rights of action for breach of contract are reserved to the Federal Gov-  
18    ernment.

19       (b) ASSIGNMENT.—

20           (1) IN GENERAL.—Notwithstanding subsection (a) and in accordance  
21    with the requirements of this subsection, amounts due from the Fed-  
22    eral Government under a contract may be assigned to a bank, trust  
23    company, Federal lending agency, or other financing institution.

24           (2) MINIMUM AMOUNT.—This subsection applies only to a contract  
25    under which the aggregate amounts due from the Federal Government  
26    total at least \$1,000.

27           (3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made  
28    under this subsection if the contract forbids the assignment.

29           (4) FULL BALANCE DUE.—Unless otherwise expressly permitted by  
30    the contract, an assignment under this subsection must cover the bal-  
31    ance of all amounts due from the Federal Government under the con-  
32    tract.

33           (5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by  
34    the contract, an assignment under this subsection may not be made to  
35    more than one party or be subject to further assignment, except that  
36    assignment may be made to one party as agent or trustee for 2 or  
37    more parties participating in the financing.

38           (6) WRITTEN NOTICE.—The assignee of an assignment under this  
39    subsection shall file written notice of the assignment and a true copy  
40    of the instrument of assignment with—

1 (A) the contracting officer or head of the officer's department  
2 or agency;

3 (B) the surety on any bond connected with the contract; and

4 (C) the disbursing officer, if any, designated in the contract to  
5 make payment.

6 (7) VALIDITY.—Notwithstanding any law to the contrary governing  
7 the validity of assignments, an assignment under this subsection is a  
8 valid assignment for all purposes.

9 (8) NO REFUND TO COVER ASSIGNOR'S LIABILITY.—The assignee of  
10 an assignment under this subsection is not liable to make any refund  
11 to the Federal Government because of an assignor's liability to the  
12 Federal Government, whether that liability arises from the contract or  
13 independently.

14 (9) AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.—

15 (A) CONTRACT PROVISION.—A contract of the Department of  
16 Defense, the General Services Administration, the Department of  
17 Energy, or another department or agency of the Federal Govern-  
18 ment designated by the President may, on a determination of need  
19 by the President, provide or be amended without consideration to  
20 provide that payments made to an assignee under the contract are  
21 not subject to reduction or setoff. Each determination of need by  
22 the President under this subparagraph shall be published in the  
23 Federal Register.

24 (B) CARRYING OUT CONTRACT PROVISION.—When a “no reduc-  
25 tion or setoff” provision as described in subparagraph (A) is in-  
26 cluded in a contract, payments to the assignee are not subject to  
27 reduction or setoff for an assignor's liability arising—

28 (i) independently of the contract;

29 (ii) on account of renegotiation under a renegotiation stat-  
30 ute or under a statutory renegotiation article in the contract;

31 (iii) on account of fines;

32 (iv) on account of penalties; or

33 (v) on account of taxes, social security contributions, or the  
34 withholding or non-withholding of taxes or social security con-  
35 tributions, whether arising from or independently of the con-  
36 tract.

37 (C) LIMITATION.—Subparagraph (B)(iv) does not apply to  
38 amounts which may be collected or withheld from the assignor in  
39 accordance with or for failure to comply with the terms of the con-  
40 tract.

1    **§ 6306. Prohibition on Members of Congress making con-**  
 2                   **tracts with Federal Government**

3           (a) IN GENERAL.—A Member of Congress may not enter into or benefit  
 4 from a contract or agreement or any part of a contract or agreement with  
 5 the Federal Government.

6           (b) EXEMPTIONS.—

7               (1) IN GENERAL.—Subsection (a) does not apply to contracts that  
 8 the Secretary of Agriculture may enter into with farmers.

9               (2) CERTAIN ACTS.—Subsection (a) does not apply to a contract en-  
 10 tered into under—

11                   (A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

12                   (B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

13                   (C) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.).

14               (3) PUBLIC RECORD.—An exemption under this subsection shall be  
 15 made a matter of public record.

16    **§ 6307. Contracts with Federal Government-owned estab-**  
 17                   **lishments and availability of appropriations**

18           An order or contract placed with a Federal Government-owned establish-  
 19 ment for work, material, or the manufacture of material pertaining to an  
 20 approved project is deemed to be an obligation in the same manner that  
 21 a similar order or contract placed with a commercial manufacturer or pri-  
 22 vate contractor is an obligation. Appropriations remain available to pay an  
 23 obligation to a Federal Government-owned establishment just as appropri-  
 24 ations remain available to pay an obligation to a commercial manufacturer  
 25 or private contractor.

26    **§ 6308. Contracts for transportation of Federal Government**  
 27                   **securities**

28           When practicable, a contract for transporting bullion, cash, or securities  
 29 of the Federal Government shall be awarded to the lowest responsible bidder  
 30 after notice to all parties with means of transportation.

31    **§ 6309. Honorable discharge certificate in lieu of birth cer-**  
 32                   **tificate**

33           (a) IN GENERAL.—An employer described in subsection (b) may not deny  
 34 employment, on account of failure to produce a birth certificate, to an indi-  
 35 vidual who submits, in lieu of the birth certificate, an honorable discharge  
 36 certificate (or certificate issued in lieu of an honorable discharge certificate)  
 37 from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the  
 38 United States, unless the honorable discharge certificate shows on its face  
 39 that the individual may have been an alien at the time of its issuance.

40           (b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to  
 41 in subsection (a) is an employer—

1 (1) engaged in—

2 (A) the production, maintenance, or storage of arms, armament,  
3 ammunition, implements of war, munitions, machinery, tools,  
4 clothing, food, fuel, or any articles or supplies, or parts or ingredi-  
5 ents of any articles or supplies; or

6 (B) the construction, reconstruction, repair, or installation of a  
7 building, plant, structure, or facility; and

8 (2) engaged in the activity described in paragraph (1) under—

9 (A) a contract with the Federal Government; or

10 (B) any contract that the President, the Secretary of the Army,  
11 the Secretary of the Air Force, the Secretary of the Navy, or the  
12 Secretary of the Department in which the Coast Guard is oper-  
13 ating certifies to the employer to be necessary to the national de-  
14 fense.

15 **CHAPTER 65—CONTRACTS FOR MATERIALS, SUPPLIES,**  
16 **ARTICLES, AND EQUIPMENT EXCEEDING \$10,000**

Sec.

6501. Definitions.  
6502. Required contract terms.  
6503. Breach or violation of required contract terms.  
6504. Three-year prohibition on new contracts in case of breach or violation.  
6505. Exclusions.  
6506. Administrative provisions.  
6507. Hearing authority and procedures.  
6508. Authority to make exceptions.  
6509. Other procedures.  
6510. Manufacturers and regular dealers.  
6511. Effect on other law.

17 **§ 6501. Definitions**

18 In this chapter—

19 (1) AGENCY OF THE UNITED STATES.—The term “agency of the  
20 United States” means an executive department, independent establish-  
21 ment, or other agency or instrumentality of the United States, the Dis-  
22 trict of Columbia, or a corporation in which all stock is beneficially  
23 owned by the Federal Government.

24 (2) PERSON.—The term “person” includes one or more individuals,  
25 partnerships, associations, corporations, legal representatives, trustees,  
26 trustees in cases under title 11, or receivers.

27 (3) SECRETARY.—The term “Secretary” means the Secretary of  
28 Labor.

29 **§ 6502. Required contract terms**

30 A contract made by an agency of the United States for the manufacture  
31 or furnishing of materials, supplies, articles, or equipment, in an amount  
32 exceeding \$10,000, shall include the following representations and stipula-  
33 tions:

1 (1) MINIMUM WAGES TO BE PAID.—All individuals employed by the  
2 contractor in the manufacture or furnishing of materials, supplies, arti-  
3 cles, or equipment under the contract will be paid, without subsequent  
4 deduction or rebate on any account, not less than the prevailing min-  
5 imum wages, as determined by the Secretary, for individuals employed  
6 in similar work or in the particular or similar industries or groups of  
7 industries currently operating in the locality in which the materials,  
8 supplies, articles, or equipment are to be manufactured or furnished  
9 under the contract, except that this paragraph applies only to pur-  
10 chases or contracts relating to industries that have been the subject  
11 matter of a determination by the Secretary.

12 (2) MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.—No  
13 individual employed by the contractor in the manufacture or furnishing  
14 of materials, supplies, articles, or equipment under the contract shall  
15 be permitted to work in excess of 40 hours in any one week, except  
16 that this paragraph does not apply to an employer who has entered  
17 into an agreement with employees pursuant to paragraph (1) or (2) of  
18 section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C.  
19 207(b)(1) or (2)).

20 (3) INELIGIBLE EMPLOYEES.—No individual under 16 years of age  
21 and no incarcerated individual will be employed by the contractor in  
22 the manufacture or furnishing of materials, supplies, articles, or equip-  
23 ment under the contract, except that this section, or other law or exec-  
24 utive order containing similar prohibitions against the purchase of  
25 goods by the Federal Government, does not apply to convict labor that  
26 satisfies the conditions of section 1761(c) of title 18.

27 (4) STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CON-  
28 TRACT PERFORMED.—No part of the contract will be performed, and  
29 no materials, supplies, articles, or equipment will be manufactured or  
30 fabricated under the contract, in plants, factories, buildings, or sur-  
31 roundings, or under working conditions, that are unsanitary, haz-  
32 ardous, or dangerous to the health and safety of employees engaged in  
33 the performance of the contract. Compliance with the safety, sanitary,  
34 and factory inspection laws of the State in which the work or part of  
35 the work is to be performed is prima facie evidence of compliance with  
36 this paragraph.

37 **§ 6503. Breach or violation of required contract terms**

38 (a) APPLICABLE BREACH OR VIOLATION.—This section applies in case of  
39 breach or violation of a representation or stipulation included in a contract  
40 under section 6502 of this title.

1 (b) LIQUIDATED DAMAGES.—In addition to damages for any other breach  
 2 of the contract, the party responsible for a breach or violation described in  
 3 subsection (a) is liable to the Federal Government for the following liq-  
 4 uidated damages:

5 (1) An amount equal to the sum of \$10 per day for each individual  
 6 under 16 years of age and each incarcerated individual knowingly em-  
 7 ployed in the performance of the contract.

8 (2) An amount equal to the sum of each underpayment of wages due  
 9 an employee engaged in the performance of the contract, including any  
 10 underpayments arising from deductions, rebates, or refunds.

11 (c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to the  
 12 Federal Government being entitled to damages described in subsection (b),  
 13 the agency of the United States that made the contract may cancel the con-  
 14 tract and make open-market purchases or make other contracts for the com-  
 15 pletion of the original contract, charging any additional cost to the original  
 16 contractor.

17 (d) RECOVERY OF AMOUNTS DUE.—An amount due the Federal Govern-  
 18 ment because of a breach or violation described in subsection (a) may be  
 19 withheld from any amounts owed the contractor under any contract under  
 20 section 6502 of this title or may be recovered in a suit brought by the At-  
 21 torney General.

22 (e) EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.—An  
 23 amount withheld or recovered under subsection (d) that is based on an un-  
 24 derpayment of wages as described in subsection (b)(2) shall be held in a  
 25 special deposit account. On order of the Secretary, the amount shall be paid  
 26 directly to the underpaid employee on whose account the amount was with-  
 27 held or recovered. However, an employee's claim for payment under this  
 28 subsection may be entertained only if made within one year from the date  
 29 of actual 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  
 33 each agency of the United States a list containing the names of persons  
 34 found by the Secretary to have breached or violated a representation or stip-  
 35 ulation included in a contract under section 6502 of this title.

36 (b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends oth-  
 37 erwise, a contract described in section 6502 of this title may not be awarded  
 38 to a person named on the list under subsection (a), or to a firm, corpora-  
 39 tion, partnership, or association in which the person has a controlling inter-  
 40 est, until 3 years have elapsed from the date of the determination by the  
 41 Secretary that a breach or violation occurred.

1 **§ 6505. Exclusions**

2 (a) ITEMS AVAILABLE IN THE OPEN MARKET.—This chapter does not  
3 apply to the purchase of materials, supplies, articles, or equipment that may  
4 usually be bought in the open market.

5 (b) PERISHABLES AND AGRICULTURAL PRODUCTS.—This chapter does  
6 not apply to any of the following:

7 (1) Perishables, including dairy, livestock and nursery products.

8 (2) Agricultural or farm products processed for first sale by the  
9 original producers.

10 (3) Contracts made by the Secretary of Agriculture for the purchase  
11 of agricultural commodities or products of agricultural commodities.

12 (c) CARRIAGE OF FREIGHT OR PERSONNEL.—This chapter may not be  
13 construed to apply to—

14 (1) the carriage of freight or personnel by vessel, airplane, bus,  
15 truck, express, or railway line where published tariff rates are in effect;  
16 or

17 (2) common carriers subject to the Communications Act of 1934 (47  
18 U.S.C. 151 et seq.).

19 **§ 6506. Administrative provisions**

20 (a) IN GENERAL.—The Secretary shall administer this chapter.

21 (b) REGULATIONS.—The Secretary may make, amend, and rescind regu-  
22 lations as necessary to carry out this chapter.

23 (c) USE OF GOVERNMENT OFFICERS AND EMPLOYEES.—The Secretary  
24 shall use Federal officers and employees and, with a State's consent, State  
25 and local officers and employees as the Secretary finds necessary to assist  
26 in the administration of this chapter.

27 (d) APPOINTMENTS.—The Secretary shall appoint an administrative offi-  
28 cer and attorneys, experts, and other employees from time to time as the  
29 Secretary finds necessary for the administration of this chapter. The ap-  
30 pointments are subject to chapter 51 and subchapter III of chapter 53 of  
31 title 5 and other law applicable to the employment and compensation of offi-  
32 cers and employees of the Federal Government.

33 (e) INVESTIGATIONS.—The Secretary, or an authorized representative of  
34 the Secretary, may make investigations and findings as provided in this  
35 chapter and may, in any part of the United States, prosecute an inquiry  
36 necessary to carry out this chapter.

37 **§ 6507. Hearing authority and procedures**

38 (a) RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINA-  
39 TIONS.—A wage determination under section 6502(1) of this title shall be  
40 made on the record after opportunity for a hearing.

1 (b) AUTHORITY TO HOLD HEARINGS.—The Secretary or an impartial  
2 representative designated by the Secretary may hold hearings when there is  
3 a complaint of breach or violation of a representation or stipulation included  
4 in a contract under section 6502 of this title. The Secretary may initiate  
5 hearings on the Secretary’s own motion or on the application of a person  
6 affected by the ruling of an agency of the United States relating to a pro-  
7 posal or contract under this chapter.

8 (c) ORDERS TO COMPEL TESTIMONY.—The Secretary or an impartial  
9 representative designated by the Secretary may issue orders requiring wit-  
10 nesses to attend hearings held under this section and to produce evidence  
11 and testify under oath. Witnesses shall be paid fees and mileage at the same  
12 rates as witnesses in courts of the United States.

13 (d) ENFORCEMENT OF ORDERS.—If a person refuses or fails to obey an  
14 order issued under subsection (c), the Secretary or an impartial representa-  
15 tive designated by the Secretary may bring an action to enforce the order  
16 in a district court of the United States or in the district court of a territory  
17 or possession of the United States. A court has jurisdiction to enforce the  
18 order if the inquiry is being carried out within the court’s judicial district  
19 or if the person is found or resides or transacts business within the court’s  
20 judicial district. The court may issue an order requiring the person to obey  
21 the order issued under subsection (c), and the court may punish any further  
22 refusal or failure as contempt of court.

23 (e) FINDINGS OF FACT.—After notice and a hearing, the Secretary or an  
24 impartial representative designated by the Secretary shall make findings of  
25 fact. The findings are conclusive for agencies of the United States. If sup-  
26 ported by a preponderance of the evidence, the findings are conclusive in  
27 any court of the United States.

28 (f) DECISIONS.—The Secretary or an impartial representative designated  
29 by the Secretary may make decisions, based on findings of fact, that are  
30 considered necessary to enforce this chapter.

### 31 **§ 6508. Authority to make exceptions**

32 (a) DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.—When the head  
33 of an agency of the United States makes a written finding that the inclusion  
34 of representations or stipulations under section 6502 of this title in a pro-  
35 posal or contract will seriously impair the conduct of Federal Government  
36 business, the Secretary shall make exceptions, in specific cases or otherwise,  
37 when justice or the public interest will be served.

38 (b) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CON-  
39 TRACTS.—When an agency of the United States and a contractor jointly  
40 recommend, the Secretary may modify the terms of an existing contract  
41 with respect to minimum wages and maximum hours of labor as the Sec-

1     retary finds necessary and proper in the public interest or to prevent injus-  
2     tice and undue hardship.

3     (c) AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARI-  
4     ATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide rea-  
5     sonable limitations and may prescribe regulations to allow reasonable vari-  
6     ations, tolerances, and exemptions in the application of this chapter to con-  
7     tractors, including with respect to minimum wages and maximum hours of  
8     labor.

9     (d) RATE OF PAY FOR OVERTIME.—When the Secretary permits an in-  
10    crease in the maximum hours of labor stipulated in a contract, the Sec-  
11    retary shall set a rate of pay for overtime. The overtime rate must be at  
12    least one and one-half times the basic hourly rate.

13    (e) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may  
14    suspend any of the representations and stipulations contained in section  
15    6502 of this title whenever, in the President’s judgment, suspension is in  
16    the public interest.

17    **§ 6509. Other procedures**

18    (a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Not-  
19    withstanding section 553 of title 5, subchapter II of chapter 5 and chapter  
20    7 of title 5 are applicable in the administration of sections 6501 to 6507  
21    and 6511 of this title.

22    (b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of  
23    representations and stipulations in a contract under section 6502 of this  
24    title, an interested person has the right of judicial review of any legal ques-  
25    tion which might otherwise be raised, including wage determinations and the  
26    interpretation of the terms “locality” and “open market”.

27    (c) JUDICIAL REVIEW OF WAGE DETERMINATIONS.—A person adversely  
28    affected or aggrieved by a wage determination under section 6502(1) of this  
29    title has the right of judicial review of the determination, or of the applica-  
30    bility of the determination, within 90 days after the determination is made,  
31    in the manner provided by chapter 7 of title 5. A person adversely affected  
32    or aggrieved by a wage determination is deemed to include a person in an  
33    industry to which the determination applies that is a supplier of materials,  
34    supplies, articles, or equipment that are purchased or intended to be pur-  
35    chased by the Federal Government from any source.

36    **§ 6510. Manufacturers and regular dealers**

37    (a) PRESCRIBING STANDARDS.—The Secretary may prescribe, in regula-  
38    tions, standards for determining whether a contractor is a manufacturer or  
39    regular dealer with respect to materials, supplies, articles, or equipment to  
40    be manufactured or furnished under, or used in the performance of, a con-  
41    tract entered into by an agency of the United States.

1 (b) JUDICIAL REVIEW.—An interested person has the right of judicial re-  
 2 view of any legal question relating to interpretation of the terms “regular  
 3 dealer” and “manufacturer” as defined pursuant to subsection (a).

4 **§ 6511. Effect on other law**

5 This chapter may not be construed to modify or amend the following pro-  
 6 visions:

- 7 (1) Chapter 83 of this title.  
 8 (2) Sections 3141 to 3144, 3146, and 3147 of title 40.  
 9 (3) Chapter 307 of title 18.

10 **CHAPTER 67—SERVICE CONTRACT LABOR STANDARDS**

Sec.

6701. Definitions.  
 6702. Contracts to which this chapter applies.  
 6703. Required contract terms.  
 6704. Limitation on minimum wage.  
 6705. Violations.  
 6706. Three-year prohibition on new contracts in case of violation.  
 6707. Enforcement and administration of chapter.

11 **§ 6701. Definitions**

12 In this chapter:

13 (1) COMPENSATION.—The term “compensation” means any of the  
 14 payments or fringe benefits described in section 6703 of this title.

15 (2) SECRETARY.—The term “Secretary” means the Secretary of  
 16 Labor.

17 (3) SERVICE EMPLOYEE.—The term “service employee”—

18 (A) means an individual engaged in the performance of a con-  
 19 tract made by the Federal Government and not exempted under  
 20 section 6702(b) of this title, whether negotiated or advertised, the  
 21 principal purpose of which is to furnish services in the United  
 22 States;

23 (B) includes an individual without regard to any contractual re-  
 24 lationship alleged to exist between the individual and a contractor  
 25 or subcontractor; but

26 (C) does not include an individual employed in a bona fide exec-  
 27 utive, administrative, or professional capacity, as those terms are  
 28 defined in part 541 of title 29, Code of Federal Regulations.

29 (4) UNITED STATES.—The term “United States”—

30 (A) includes any State of the United States, the District of Co-  
 31 lumbia, Puerto Rico, the Virgin Islands, the outer Continental  
 32 Shelf as defined in the Outer Continental Shelf Lands Act (43  
 33 U.S.C. § 1331 et seq.), American Samoa, Guam, Wake Island, and  
 34 Johnston Island; but

1 (B) does not include any other territory under the jurisdiction  
 2 of the United States or any United States base or possession with-  
 3 in a foreign country.

4 **§ 6702. Contracts to which this chapter applies**

5 (a) IN GENERAL.—Except as provided in subsection (b), this chapter ap-  
 6 plies to any contract or bid specification for a contract, whether negotiated  
 7 or advertised, that—

8 (1) is made by the Federal Government or the District of Columbia;

9 (2) involves an amount exceeding \$2,500; and

10 (3) has as its principal purpose the furnishing of services in the  
 11 United States through the use of service employees.

12 (b) EXEMPTIONS.—This chapter does not apply to—

13 (1) a contract of the Federal Government or the District of Colum-  
 14 bia for the construction, alteration, or repair, including painting and  
 15 decorating, of public buildings or public works;

16 (2) any work required to be done in accordance with chapter 65 of  
 17 this title;

18 (3) a contract for the carriage of freight or personnel by vessel, air-  
 19 plane, bus, truck, express, railway line or oil or gas pipeline where pub-  
 20 lished tariff rates are in effect;

21 (4) a contract for the furnishing of services by radio, telephone, tele-  
 22 graph, or cable companies, subject to the Communications Act of 1934  
 23 (47 U.S.C. 151 et seq.);

24 (5) a contract for public utility services, including electric light and  
 25 power, water, steam, and gas;

26 (6) an employment contract providing for direct services to a Federal  
 27 agency by an individual; and

28 (7) a contract with the United States Postal Service, the principal  
 29 purpose of which is the operation of postal contract stations.

30 **§ 6703. Required contract terms**

31 A contract, and bid specification for a contract, to which this chapter ap-  
 32 plies under section 6702 of this title shall contain the following terms:

33 (1) MINIMUM WAGE.—The contract and bid specification shall con-  
 34 tain a provision specifying the minimum wage to be paid to each class  
 35 of service employee engaged in the performance of the contract or any  
 36 subcontract, as determined by the Secretary or the Secretary's author-  
 37 ized representative, in accordance with prevailing rates in the locality,  
 38 or, where a collective-bargaining agreement covers the service employ-  
 39 ees, in accordance with the rates provided for in the agreement, includ-  
 40 ing prospective wage increases provided for in the agreement as a re-  
 41 sult of arm's length negotiations. In any case the minimum wage may

1 not be less than the minimum wage specified in section 6704 of this  
2 title.

3 (2) FRINGE BENEFITS.—The contract and bid specification shall  
4 contain a provision specifying the fringe benefits to be provided to each  
5 class of service employee engaged in the performance of the contract  
6 or any subcontract, as determined by the Secretary or the Secretary's  
7 authorized representative to be prevailing in the locality, or, where a  
8 collective-bargaining agreement covers the service employees, to be pro-  
9 vided for under the agreement, including prospective fringe benefit in-  
10 creases provided for in the agreement as a result of arm's-length nego-  
11 tiations. The fringe benefits shall include medical or hospital care, pen-  
12 sions on retirement or death, compensation for injuries or illness result-  
13 ing from occupational activity, or insurance to provide any of the fore-  
14 going, unemployment benefits, life insurance, disability and sickness in-  
15 surance, accident insurance, vacation and holiday pay, costs of appren-  
16 ticeship or other similar programs and other bona fide fringe benefits  
17 not otherwise required by Federal, State, or local law to be provided  
18 by the contractor or subcontractor. The obligation under this para-  
19 graph may be discharged by furnishing any equivalent combinations of  
20 fringe benefits or by making equivalent or differential payments in cash  
21 under regulations established by the Secretary.

22 (3) WORKING CONDITIONS.—The contract and bid specification shall  
23 contain a provision specifying that no part of the services covered by  
24 this chapter may be performed in buildings or surroundings or under  
25 working conditions, provided by or under the control or supervision of  
26 the contractor or any subcontractor, which are unsanitary or hazardous  
27 or dangerous to the health or safety of service employees engaged to  
28 provide the services.

29 (4) NOTICE.—The contract and bid specification shall contain a pro-  
30 vision specifying that on the date a service employee begins work on  
31 a contract to which this chapter applies, the contractor or subcon-  
32 tractor will deliver to the employee a notice of the compensation re-  
33 quired under paragraphs (1) and (2), on a form prepared by the Fed-  
34 eral agency, or will post a notice of the required compensation in a  
35 prominent place at the worksite.

36 (5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYS-  
37 TEMS.—The contract and bid specification shall contain a statement of  
38 the rates that would be paid by the Federal agency to each class of  
39 service employee if section 5332 or 5341 of title 5 were applicable to  
40 them. The Secretary shall give due consideration to these rates in mak-  
41 ing the wage and fringe benefit determinations specified in this section.

1    **§ 6704. Limitation on minimum wage**

2       (a) IN GENERAL.—A contractor that makes a contract with the Federal  
3    Government, the principal purpose of which is to furnish services through  
4    the use of service employees, and any subcontractor, may not pay less than  
5    the minimum wage specified under section 6(a)(1) of the Fair Labor Stand-  
6    ards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in per-  
7    forming work on the contract.

8       (b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to  
9    a violation of this section.

10   **§ 6705. Violations**

11       (a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a viola-  
12    tion of a contract provision required under section 6703(1) or (2) of this  
13    title or a violation of section 6704 of this title is liable for an amount equal  
14    to the sum of any deduction, rebate, refund, or underpayment of compensa-  
15    tion due any employee engaged in the performance of the contract.

16       (b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

17           (1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The  
18    total amount determined under subsection (a) to be due any employee  
19    engaged in the performance of a contract may be withheld from ac-  
20    crued payments due on the contract or on any other contract between  
21    the same contractor and the Federal Government. The amount with-  
22    held shall be held in a deposit fund. On order of the Secretary, the  
23    compensation found by the Secretary or the head of a Federal agency  
24    to be due an underpaid employee pursuant to this chapter shall be paid  
25    from the deposit fund directly to the underpaid employee.

26           (2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued pay-  
27    ments withheld under the terms of the contract are insufficient to reim-  
28    burse a service employee with respect to whom there has been a failure  
29    to pay the compensation required pursuant to this chapter, the Federal  
30    Government may bring action against the contractor, subcontractor, or  
31    any sureties in any court of competent jurisdiction to recover the re-  
32    maining amount of underpayment. Any amount recovered shall be held  
33    in the deposit fund and shall be paid, on order of the Secretary, di-  
34    rectly to the underpaid employee. Any amount not paid to an employee  
35    because of inability to do so within 3 years shall be covered into the  
36    Treasury as miscellaneous receipts.

37       (c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to  
38    other actions in accordance with this section, when a violation of any con-  
39    tract stipulation is found, the Federal agency that made the contract may  
40    cancel the contract on written notice to the original contractor. The Federal  
41    Government may then make other contracts or arrangements for the com-

1 pletion of the original contract, charging any additional cost to the original  
2 contractor.

3 (d) ENFORCEMENT OF SECTION.—In accordance with regulations pre-  
4 scribed pursuant to section 6707(a)–(d) of this title, the Secretary or the  
5 head of a Federal agency may carry out this section.

6 **§ 6706. Three-year prohibition on new contracts in case of**  
7 **violation**

8 (a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to  
9 each agency of the Federal Government a list containing the names of per-  
10 sons or firms that a Federal agency or the Secretary has found to have vio-  
11 lated this chapter.

12 (b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends oth-  
13 erwise because of unusual circumstances, a Federal Government contract  
14 may not be awarded to a person or firm named on the list under subsection  
15 (a), or to an entity in which the person or firm has a substantial interest,  
16 until 3 years have elapsed from the date of publication of the list. If the  
17 Secretary does not recommend otherwise because of unusual circumstances,  
18 the Secretary shall, not later than 90 days after a hearing examiner has  
19 made a finding of a violation of this chapter, forward to the Comptroller  
20 General the name of the person or firm found to have violated this chapter.

21 **§ 6707. Enforcement and administration of chapter**

22 (a) ENFORCEMENT OF CHAPTER.—Sections 6506 and 6507 of this title  
23 govern the Secretary’s authority to enforce this chapter, including the Sec-  
24 retary’s authority to prescribe regulations, issue orders, hold hearings, make  
25 decisions based on findings of fact, and take other appropriate action under  
26 this chapter.

27 (b) LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES,  
28 AND EXEMPTIONS.—The Secretary may provide reasonable limitations and  
29 may prescribe regulations allowing reasonable variation, tolerances, and ex-  
30 emptions with respect to this chapter (other than subsection (f)), but only  
31 in special circumstances where the Secretary determines that the limitation,  
32 variation, tolerance, or exemption is necessary and proper in the public in-  
33 terest or to avoid the serious impairment of Federal Government business,  
34 and is in accord with the remedial purpose of this chapter to protect pre-  
35 vailing labor standards.

36 (c) PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDE-  
37 CESSION CONTRACTS.—

38 (1) IN GENERAL.—Under a contract which succeeds a contract sub-  
39 ject to this chapter, and under which substantially the same services  
40 are furnished, a contractor or subcontractor may not pay a service em-  
41 ployee less than the wages and fringe benefits the service employee

1 would have received under the predecessor contract, including accrued  
 2 wages and fringe benefits and any prospective increases in wages and  
 3 fringe benefits provided for in a collective-bargaining agreement as a  
 4 result of arm's-length negotiations.

5 (2) EXCEPTION.—This subsection does not apply if the Secretary  
 6 finds after a hearing in accordance with regulations adopted by the  
 7 Secretary that wages and fringe benefits under the predecessor con-  
 8 tract are substantially at variance with wages and fringe benefits pre-  
 9 vailing in the same locality for services of a similar character.

10 (d) DURATION OF CONTRACTS.—Subject to limitations in annual appro-  
 11 priation acts but notwithstanding any other law, a contract to which this  
 12 chapter applies may, if authorized by the Secretary, be for any term of  
 13 years not exceeding 5, if the contract provides for periodic adjustment of  
 14 wages and fringe benefits pursuant to future determinations, issued in the  
 15 manner prescribed in section 6703 of this title at least once every 2 years  
 16 during the term of the contract, covering each class of service employee.

17 (e) EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVER-  
 18 TIME PAY.—In determining any overtime pay to which a service employee  
 19 is entitled under Federal law, the regular or basic hourly rate of pay of the  
 20 service employee does not include any fringe benefit payments computed  
 21 under this chapter which are excluded from the definition of “regular rate”  
 22 under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C.  
 23 207(e)).

24 (f) TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.—It  
 25 is the intent of Congress that determinations of minimum wages and fringe  
 26 benefits under section 6703(1) and (2) of this title should be made as soon  
 27 as administratively feasible for all contracts subject to this chapter. In any  
 28 event, the Secretary shall at least make the determinations for contracts  
 29 under which more than 5 service employees are to be employed.

## 30 **CHAPTER 69—CONTRACT DISPUTES**

Sec.

- 6901. Definitions.
- 6902. Applicability of chapter.
- 6903. Decision by contracting officer.
- 6904. Contractor's right of appeal from decision by contracting officer.
- 6905. Agency boards.
- 6906. Agency board procedures for accelerated and small claims.
- 6907. Judicial review of agency board decisions.
- 6908. Payment of claims.
- 6909. Interest.

### 31 **§ 6901. Definitions**

32 In this chapter:

33 (1) ADMINISTRATOR.—The term “Administrator” means the Admin-  
 34 istrator for Federal Procurement Policy appointed pursuant to section  
 35 1102 of this title.

1 (2) AGENCY BOARD.—The term “agency board” means an agency  
2 board of contract appeals established under section 6905 of this title.

3 (3) AGENCY HEAD.—The term “agency head” means the head and  
4 any assistant head of an executive agency. The term may include the  
5 chief official of a principal division of an executive agency if the head  
6 of the executive agency so designates that chief official.

7 (4) CONTRACTING OFFICER.—The term “contracting officer”—

8 (A) means an individual who, by appointment in accordance  
9 with applicable regulations, has the authority to make and admin-  
10 ister contracts and to make determinations and findings with re-  
11 spect to contracts; and

12 (B) includes an authorized representative of the contracting of-  
13 ficer, acting within the limits of the representative’s authority.

14 (5) CONTRACTOR.—The term “contractor” means a party to a Fed-  
15 eral Government contract other than the Federal Government.

16 (6) EXECUTIVE AGENCY.—The term “executive agency” means—

17 (A) an executive department as defined in section 101 of title  
18 5;

19 (B) a military department as defined in section 102 of title 5;

20 (C) an independent establishment as defined in section 104 of  
21 title 5, except that the term does not include the Government Ac-  
22 countability Office;

23 (D) a wholly owned Government corporation as defined in sec-  
24 tion 9101(3) of title 31;

25 (E) the United States Postal Service; and

26 (F) the Postal Rate Commission.

27 (7) MISREPRESENTATION OF FACT.—The term “misrepresentation  
28 of fact” means a false statement of substantive fact, or conduct that  
29 leads to a belief of a substantive fact material to proper understanding  
30 of the matter in hand, made with intent to deceive or mislead.

### 31 **§ 6902. Applicability of chapter**

32 (a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically pro-  
33 vided in this chapter, this chapter applies to any express or implied contract  
34 (including those of the nonappropriated fund activities described in sections  
35 1346 and 1491 of title 28) made by an executive agency for—

36 (1) the procurement of property, other than real property in being;

37 (2) the procurement of services;

38 (3) the procurement of construction, alteration, repair, or mainte-  
39 nance of real property; or

40 (4) the disposal of personal property.

41 (b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

1 (1) IN GENERAL.—With respect to contracts of the Tennessee Valley  
2 Authority, this chapter applies only to contracts containing a clause  
3 that requires contract disputes to be resolved through an agency ad-  
4 ministrative process.

5 (2) EXCLUSION.—Notwithstanding any other provision of this chap-  
6 ter, this chapter does not apply to a contract of the Tennessee Valley  
7 Authority for the sale of fertilizer or electric power or related to the  
8 conduct or operation of the electric power system.

9 (c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CON-  
10 TRACTS.—If an agency head determines that applying this chapter would  
11 not be in the public interest, this chapter does not apply to a contract with  
12 a foreign government, an agency of a foreign government, an international  
13 organization, or a subsidiary body of an international organization.

14 (d) MARITIME CONTRACTS.—Appeals under section 6907(a) of this title  
15 and actions brought under sections 6904(b) and 6907(b)–(f) of this title,  
16 arising out of maritime contracts, are governed by the Act of March 9, 1920  
17 (known as the Suits in Admiralty Act) (46 App. U.S.C. 741 et seq.), or the  
18 Act of March 3, 1925 (known as the Public Vessels Act) (46 App. U.S.C.  
19 781 et seq.), as applicable, to the extent that those Acts are not inconsistent  
20 with this chapter.

21 **§ 6903. Decision by contracting officer**

22 (a) CLAIMS GENERALLY.—

23 (1) SUBMISSION OF CONTRACTOR’S CLAIMS TO CONTRACTING OFFI-  
24 CER.—Each claim by a contractor against the Federal Government re-  
25 lating to a contract shall be submitted to the contracting officer for a  
26 decision.

27 (2) CONTRACTOR’S CLAIMS IN WRITING.—Each claim by a contractor  
28 against the Federal Government relating to a contract shall be in writ-  
29 ing.

30 (3) CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT’S  
31 CLAIMS.—Each claim by the Federal Government against a contractor  
32 relating to a contract shall be the subject of a decision by the con-  
33 tracting officer.

34 (4) TIME FOR SUBMITTING CLAIMS.—

35 (A) IN GENERAL.—Each claim by a contractor against the Fed-  
36 eral Government relating to a contract and each claim by the Fed-  
37 eral Government against a contractor relating to a contract shall  
38 be submitted within 6 years after the accrual of the claim.

39 (B) EXCEPTION.—This paragraph does not apply to a claim by  
40 the Federal Government against a contractor that is based on a  
41 claim by the contractor involving fraud.

1           (5) APPLICABILITY.—The authority of this subsection and sub-  
2 sections (c)(1), (d), and (e) does not extend to a claim or dispute for  
3 penalties or forfeitures prescribed by statute or regulation that another  
4 Federal agency is specifically authorized to administer, settle, or deter-  
5 mine.

6 (b) CERTIFICATION OF CLAIMS.—

7           (1) REQUIREMENT GENERALLY.—For claims of more than \$100,000  
8 made by a contractor, the contractor shall certify that—

9                   (A) the claim is made in good faith;

10                   (B) the supporting data are accurate and complete to the best  
11 of the contractor’s knowledge and belief;

12                   (C) the amount requested accurately reflects the contract ad-  
13 justment for which the contractor believes the Federal Government  
14 is liable; and

15                   (D) the certifier is authorized to certify the claim on behalf of  
16 the contractor.

17           (2) WHO MAY EXECUTE CERTIFICATION.—The certification required  
18 by paragraph (1) may be executed by an individual authorized to bind  
19 the contractor with respect to the claim.

20           (3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—A con-  
21 tracting officer is not obligated to render a final decision on a claim  
22 of more than \$100,000 that is not certified in accordance with para-  
23 graph (1) if, within 60 days after receipt of the claim, the contracting  
24 officer notifies the contractor in writing of the reasons why any at-  
25 tempted certification was found to be defective. A defect in the certifi-  
26 cation of a claim does not deprive a court or an agency board of juris-  
27 diction over the claim. Prior to the entry of a final judgment by a court  
28 or a decision by an agency board, the court or agency board shall re-  
29 quire a defective certification to be corrected.

30 (c) FRAUDULENT CLAIMS.—

31           (1) NO AUTHORITY TO SETTLE.—This section does not authorize an  
32 agency head to settle, compromise, pay, or otherwise adjust any claim  
33 involving fraud.

34           (2) LIABILITY OF CONTRACTOR.—If a contractor is unable to sup-  
35 port any part of the contractor’s claim and it is determined that the  
36 inability is attributable to a misrepresentation of fact or fraud by the  
37 contractor, then the contractor is liable to the Federal Government for  
38 an amount equal to the unsupported part of the claim plus all of the  
39 Federal Government’s costs attributable to reviewing the unsupported  
40 part of the claim. Liability under this paragraph shall be determined

1           within 6 years of the commission of the misrepresentation of fact or  
2           fraud.

3           (d) ISSUANCE OF DECISION.—The contracting officer shall issue a deci-  
4           sion in writing and shall mail or otherwise furnish a copy of the decision  
5           to the contractor.

6           (e) CONTENTS OF DECISION.—The contracting officer’s decision shall  
7           state the reasons for the decision reached and shall inform the contractor  
8           of the contractor’s rights as provided in this chapter. Specific findings of  
9           fact are not required. If made, specific findings of fact are not binding in  
10          any subsequent proceeding.

11          (f) TIME FOR ISSUANCE OF DECISION.—

12           (1) CLAIM OF \$100,000 OR LESS.—A contracting officer shall issue a  
13           decision on any submitted claim of \$100,000 or less within 60 days  
14           from the contracting officer’s receipt of a written request from the con-  
15           tractor that a decision be rendered within that period.

16           (2) CLAIM OF MORE THAN \$100,000.—A contracting officer shall,  
17           within 60 days of receipt of a submitted certified claim over  
18           \$100,000—

19                   (A) issue a decision; or

20                   (B) notify the contractor of the time within which a decision will  
21                   be issued.

22           (3) GENERAL REQUIREMENT OF REASONABLENESS.—The decision of  
23           a contracting officer on submitted claims shall be issued within a rea-  
24           sonable time, in accordance with regulations prescribed by the agency,  
25           taking into account such factors as the size and complexity of the claim  
26           and the adequacy of information in support of the claim provided by  
27           the contractor.

28           (4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED  
29           TIME PERIOD.—A contractor may request the tribunal concerned to di-  
30           rect a contracting officer to issue a decision in a specified period of  
31           time, as determined by the tribunal concerned, in the event of undue  
32           delay on the part of the contracting officer.

33           (5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.—  
34           Failure by a contracting officer to issue a decision on a claim within  
35           the required time period is deemed to be a decision by the contracting  
36           officer denying the claim and authorizes an appeal or action on the  
37           claim as otherwise provided in this chapter. However, the tribunal con-  
38           cerned may, at its option, stay the proceedings of the appeal or action  
39           to obtain a decision by the contracting officer.

40           (g) FINALITY OF DECISION UNLESS APPEALED.—The contracting offi-  
41           cer’s decision on a claim is final and conclusive and is not subject to review

1 by any forum, tribunal, or Federal Government agency, unless an appeal or  
 2 action is timely commenced as authorized by this chapter. This chapter does  
 3 not prohibit an executive agency from including a clause in a Federal Gov-  
 4 ernment contract requiring that, pending final decision of an appeal, action,  
 5 or final settlement, a contractor shall proceed diligently with performance  
 6 of the contract in accordance with the contracting officer's decision.

7 (h) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—

8 (1) IN GENERAL.—Notwithstanding any other provision of this chap-  
 9 ter, a contractor and a contracting officer may use any alternative  
 10 means of dispute resolution under subchapter IV of chapter 5 of title  
 11 5, or other mutually agreeable procedures, for resolving claims. All pro-  
 12 visions of subchapter IV of chapter 5 of title 5 apply to alternative  
 13 means of dispute resolution under this subsection.

14 (2) CERTIFICATION OF CLAIM.—The contractor shall certify the  
 15 claim when required to do so under subsection (b)(1) or other law.

16 (3) REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLU-  
 17 TION.—

18 (A) CONTRACTING OFFICER.—A contracting officer who rejects  
 19 a contractor's request for alternative dispute resolution pro-  
 20 ceedings shall provide the contractor with a written explanation,  
 21 citing one or more of the conditions in section 572(b) of title 5  
 22 or other specific reasons that alternative dispute resolution proce-  
 23 dures are inappropriate.

24 (B) CONTRACTOR.—A contractor that rejects an agency's re-  
 25 quest for alternative dispute resolution proceedings shall inform  
 26 the agency in writing of the contractor's specific reasons for re-  
 27 jecting the request.

28 **§ 6904. Contractor's right of appeal from decision by con-**  
 29 **tracting officer**

30 (a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the  
 31 date of receipt of a contracting officer's decision under section 6903 of this  
 32 title, may appeal the decision to an agency board as provided in section  
 33 6905 of this title.

34 (b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

35 (1) IN GENERAL.—Except as provided in paragraph (2), and in lieu  
 36 of appealing the decision of a contracting officer under section 6903  
 37 of this title to an agency board, a contractor may bring an action di-  
 38 rectly on the claim in the United States Court of Federal Claims, not-  
 39 withstanding any contract provision, regulation, or rule of law to the  
 40 contrary.

1           (2) TENNESSEE VALLEY AUTHORITY.—In the case of an action  
2 against the Tennessee Valley Authority, the contractor may only bring  
3 an action directly on the claim in a district court of the United States  
4 pursuant to section 1337 of title 28, notwithstanding any contract pro-  
5 vision, regulation, or rule of law to the contrary.

6           (3) TIME FOR FILING.—A contractor shall file any action under  
7 paragraph (1) or (2) within 12 months from the date of receipt of a  
8 contracting officer's decision under section 6903 of this title.

9           (4) DE NOVO.—An action under paragraph (1) or (2) shall proceed  
10 de novo in accordance with the rules of the appropriate court.

### 11 **§ 6905. Agency boards**

#### 12 (a) ESTABLISHMENT.—

13           (1) IN GENERAL.—Except as provided in paragraph (2), an agency  
14 board of contract appeals may be established within an executive agen-  
15 cy when the agency head, after consultation with the Administrator, de-  
16 termines from a workload study that the volume of contract claims jus-  
17 tifies the establishment of a full-time agency board of at least 3 mem-  
18 bers who shall have no other inconsistent duties. Workload studies will  
19 be updated at least once every 3 years and submitted to the Adminis-  
20 trator.

21           (2) TENNESSEE VALLEY AUTHORITY.—The Board of Directors of  
22 the Tennessee Valley Authority may establish an agency board of con-  
23 tract appeals for the Authority of an indeterminate number of mem-  
24 bers.

25           (3) GUIDELINES.—The Administrator, pursuant to the authority  
26 conferred under part B of subtitle I of this title and as necessary or  
27 desirable to carry out this chapter, shall issue guidelines with respect  
28 to the establishment, functions, and procedures of agency boards, ex-  
29 cept for the agency board established by the Tennessee Valley Author-  
30 ity.

#### 31 (b) APPOINTMENT OF MEMBERS AND COMPENSATION.—

32           (1) IN GENERAL.—Except as provided in paragraph (2), members of  
33 an agency board shall be selected and appointed in the same manner  
34 as administrative law judges appointed pursuant to section 3105 of  
35 title 5, with an additional requirement that members of an agency  
36 board must have had at least 5 years of experience in public contract  
37 law. A chairman and vice chairman of each agency board shall be des-  
38 ignated by the agency head from among the appointed members. Com-  
39 pensation for the chairman, vice chairman, and other members shall be  
40 determined under section 5372a of title 5.

1           (2) TENNESSEE VALLEY AUTHORITY.—The Board of Directors of  
2           the Tennessee Valley Authority shall establish criteria for the appoint-  
3           ment of members to the agency board established under subsection  
4           (a)(2), and shall designate a chairman of the agency board. The chair-  
5           man and other members of the agency board shall receive compensa-  
6           tion, at the daily equivalent of the rates determined under section  
7           5372a of title 5, for each day they are engaged in the actual perform-  
8           ance of their duties as members of the agency board.

9           (c) INTER-AGENCY ARRANGEMENTS.—If the volume of contract claims is  
10          not sufficient to justify an agency board under subsection (a), or if an agen-  
11          cy head otherwise considers it appropriate, the agency head shall arrange  
12          for appeals from decisions by contracting officers of the agency to be de-  
13          cided by the agency board of another executive agency. If an agency head  
14          is unable to make such an arrangement, the agency head shall submit any  
15          appeals to the Administrator for placement with an agency board. This sub-  
16          section does not apply to the Tennessee Valley Authority.

17          (d) JURISDICTION.—

18           (1) IN GENERAL.—Each agency board has jurisdiction to decide any  
19           appeal from the decision of a contracting officer, relative to a contract  
20           made by—

21                   (A) the agency board's own agency; or

22                   (B) another agency, if the other agency or the Administrator  
23           designates the agency board to decide the appeal pursuant to sub-  
24           section (c).

25           (2) RELIEF.—In exercising this jurisdiction, an agency board may  
26           grant any relief that would be available to a litigant asserting a con-  
27           tract claim in the United States Court of Federal Claims.

28          (e) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency  
29          board may administer oaths to witnesses, authorize depositions and dis-  
30          covery proceedings, and require by subpoena the attendance of witnesses,  
31          and production of books and papers, for the taking of testimony or evidence  
32          by deposition or in the hearing of an appeal by the agency board. In case  
33          of contumacy or refusal to obey a subpoena by a person who resides, is  
34          found, or transacts business within the jurisdiction of a United States dis-  
35          trict court, the court, upon application of the agency board through the At-  
36          torney General, or upon application by the agency board of the Tennessee  
37          Valley Authority, shall have jurisdiction to issue the person an order requir-  
38          ing the person to appear before the agency board or a member of the agency  
39          board, to produce evidence or to give testimony, or both. Any failure of the  
40          person to obey the order of the court may be punished by the court as con-  
41          tempt of court.

1 (f) DECISIONS.—An agency board shall—

2 (1) to the fullest extent practicable provide informal, expeditious, and  
3 inexpensive resolution of disputes;

4 (2) issue a decision in writing or take other appropriate action on  
5 each appeal submitted; and

6 (3) mail or otherwise furnish a copy of the decision to the contractor  
7 and the contracting officer.

8 **§ 6906. Agency board procedures for accelerated and small**  
9 **claims**

10 (a) ACCELERATED PROCEDURE WHERE \$100,000 OR LESS IN DIS-  
11 PUTE.—The rules of each agency board shall include a procedure for the  
12 accelerated disposition of any appeal from a decision of a contracting officer  
13 where the amount in dispute is \$100,000 or less. The accelerated procedure  
14 is applicable at the sole election of the contractor. An appeal under the ac-  
15 celerated procedure shall be resolved, whenever possible, within 180 days  
16 from the date the contractor elects to use the procedure.

17 (b) SMALL CLAIMS PROCEDURE WHERE \$50,000 OR LESS IN DIS-  
18 PUTE.—

19 (1) IN GENERAL.—The rules of each agency board shall include a  
20 procedure for the expedited disposition of any appeal from a decision  
21 of a contracting officer where the amount in dispute is \$50,000 or less.  
22 The small claims procedure is applicable at the sole election of the con-  
23 tractor.

24 (2) SIMPLIFIED RULES OF PROCEDURE.—The small claims proce-  
25 dure shall provide for simplified rules of procedure to facilitate the de-  
26 cision of any appeal. An appeal under the small claims procedure may  
27 be decided by a single member of the agency board with such concur-  
28 rences as may be provided by rule or regulation.

29 (3) TIME OF DECISION.—An appeal under the small claims proce-  
30 dure shall be resolved, whenever possible, within 120 days from the  
31 date the contractor elects to use the procedure.

32 (4) FINALITY OF DECISION.—A decision against the Federal Govern-  
33 ment or against the contractor reached under the small claims proce-  
34 dure is final and conclusive and may not be set aside except in cases  
35 of fraud.

36 (5) NO PRECEDENT.—Administrative determinations and final deci-  
37 sions under this subsection have no value as precedent for future cases  
38 under this chapter.

39 (6) REVIEW OF REQUISITE AMOUNT IN CONTROVERSY.—The Admin-  
40 istrator, from time to time, may review the dollar amount specified in

1 paragraph (1) and adjust the amount in accordance with economic in-  
 2 dexes selected by the Administrator.

3 **§ 6907. Judicial review of agency board decisions**

4 (a) REVIEW.—

5 (1) IN GENERAL.—The decision of an agency board is final, except  
 6 that—

7 (A) a contractor may appeal the decision to the United States  
 8 Court of Appeals for the Federal Circuit within 120 days from the  
 9 date the contractor receives a copy of the decision; or

10 (B) if an agency head determines that an appeal should be  
 11 taken, the agency head, with the prior approval of the Attorney  
 12 General, may transmit the decision to the United States Court of  
 13 Appeals for the Federal Circuit for judicial review under section  
 14 1295 of title 28, within 120 days from the date the agency re-  
 15 ceives a copy of the decision.

16 (2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph  
 17 (1), a decision of the agency board of the Tennessee Valley Authority  
 18 is final, except that—

19 (A) a contractor may appeal the decision to a United States dis-  
 20 trict court pursuant to section 1337 of title 28, within 120 days  
 21 from the date the contractor receives a copy of the decision; or

22 (B) the Tennessee Valley Authority may appeal the decision to  
 23 a United States district court pursuant to section 1337 of title 28,  
 24 within 120 days from the date of the decision.

25 (3) REVIEW OF ARBITRATION.—An award by an arbitrator under  
 26 this chapter shall be reviewed pursuant to sections 9 to 13 of title 9,  
 27 except that the court may set aside or limit any award that is found  
 28 to violate limitations imposed by Federal statute.

29 (b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW  
 30 AND FACT.—Notwithstanding any contract provision, regulation, or rule of  
 31 law to the contrary, in an appeal by a contractor or the Federal Government  
 32 from the decision of an agency board pursuant to subsection (a)—

33 (1) the decision of the agency board on a question of law is not final  
 34 or conclusive; but

35 (2) the decision of the agency board on a question of fact is final  
 36 and conclusive and may not be set aside unless the decision is—

37 (A) fraudulent, arbitrary, or capricious;

38 (B) so grossly erroneous as to necessarily imply bad faith; or

39 (C) not supported by substantial evidence.

40 (c) REMAND.—In an appeal by a contractor or the Federal Government  
 41 from the decision of an agency board pursuant to subsection (a), the court

1 may render an opinion and judgment and remand the case for further ac-  
2 tion by the agency board or by the executive agency as appropriate, with  
3 direction the court considers just and proper.

4 (d) CONSOLIDATION.—If 2 or more actions arising from one contract are  
5 filed in the United States Court of Federal Claims and one or more agency  
6 boards, for the convenience of parties or witnesses or in the interest of jus-  
7 tice, the United States Court of Federal Claims may order the consolidation  
8 of the actions in that court or transfer any actions to or among the agency  
9 boards involved.

10 (e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an  
11 action filed pursuant to this chapter involving 2 or more claims, counter-  
12 claims, cross-claims, or third-party claims, and where a portion of one of  
13 the claims can be divided for purposes of decision or judgment, and in any  
14 action where multiple parties are involved, the court, whenever appropriate,  
15 may enter a judgment as to one or more but fewer than all of the claims  
16 or portions of claims or parties.

17 (f) ADVISORY OPINIONS.—

18 (1) IN GENERAL.—Whenever an action involving an issue described  
19 in paragraph (2) is pending in a district court of the United States,  
20 the district court may request an agency board to provide the court  
21 with an advisory opinion on the matters of contract interpretation  
22 under consideration.

23 (2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is  
24 any issue that could be the proper subject of a final decision of a con-  
25 tracting officer appealable under this chapter.

26 (3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district  
27 court shall direct a request under paragraph (1) to the agency board  
28 having jurisdiction under this chapter to adjudicate appeals of contract  
29 claims under the contract being interpreted by the court.

30 (4) TIMELY RESPONSE.—After receiving a request for an advisory  
31 opinion under paragraph (1), an agency board shall provide the advi-  
32 sory opinion in a timely manner to the district court making the re-  
33 quest.

#### 34 **§ 6908. Payment of claims**

35 (a) JUDGMENTS.—Any judgment against the Federal Government on a  
36 claim under this chapter shall be paid promptly in accordance with the pro-  
37 cedures provided by section 1304 of title 31.

38 (b) MONETARY AWARDS.—Any monetary award to a contractor by an  
39 agency board shall be paid promptly in accordance with the procedures con-  
40 tained in subsection (a).

1 (c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and  
 2 (b) shall be reimbursed to the fund provided by section 1304 of title 31 by  
 3 the agency whose appropriations were used for the contract out of available  
 4 amounts or by obtaining additional appropriations for purposes of reim-  
 5 bursement.

6 (d) TENNESSEE VALLEY AUTHORITY.—

7 (1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judg-  
 8 ment against the Tennessee Valley Authority on a claim under this  
 9 chapter shall be paid promptly in accordance with section 9(b) of the  
 10 Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

11 (2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c),  
 12 any monetary award to a contractor by the agency board of the Ten-  
 13 nessee Valley Authority shall be paid in accordance with section 9(b)  
 14 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

15 **§ 6909. Interest**

16 (a) PERIOD.—

17 (1) IN GENERAL.—Interest on an amount found due a contractor on  
 18 a claim shall be paid to the contractor for the period beginning with  
 19 the date the contracting officer receives the contractor’s claim, pursu-  
 20 ant to section 6903(a) of this title, until the date of payment of the  
 21 claim.

22 (2) DEFECTIVE CERTIFICATION.—On a claim for which the certifi-  
 23 cation under section 6903(b)(1) of this title is found to be defective,  
 24 any interest due under this section shall be paid for the period begin-  
 25 ning with the date the contracting officer initially receives the contrac-  
 26 tor’s claim until the date of payment of the claim.

27 (b) RATE.—Interest shall accrue and be paid at a rate which the Sec-  
 28 retary of the Treasury shall specify as applicable for each successive 6-  
 29 month period. The rate shall be determined by the Secretary of the Treas-  
 30 ury taking into consideration current private commercial rates of interest  
 31 for new loans maturing in approximately 5 years.

32 **Subtitle III—Miscellaneous**

Chapter	Sec.
<b>81. Drug-Free Workplace</b> .....	<b>8101</b>
<b>83. Buy American</b> .....	<b>8301</b>
<b>85. Committee for Purchase From People Who Are Blind or Se- verely Disabled.</b>	<b>8501</b>
<b>87. Kickbacks</b> .....	<b>8701</b>

33 **CHAPTER 81—DRUG-FREE WORKPLACE**

Sec.
8101. Definitions and construction.
8102. Drug-free workplace requirements for Federal contractors.
8103. Drug-free workplace requirements for Federal grant recipients.
8104. Employee sanctions and remedies.

8105. Waiver.  
8106. Regulations.

1     **§ 8101. Definitions and construction**

2     (a) DEFINITIONS.—In this chapter:

3         (1) CONTRACTOR.—The term “contractor” means the department,  
4         division, or other unit of a person responsible for the performance  
5         under the contract.

6         (2) CONTROLLED SUBSTANCE.—The term “controlled substance”  
7         means a controlled substance in schedules I through V of section 202  
8         of the Comprehensive Drug Abuse Prevention and Control Act of 1970  
9         (21 U.S.C. 812).

10        (3) CONVICTION.—The term “conviction” means a finding of guilt  
11        (including a plea of nolo contendere), an imposition of sentence, or  
12        both, by a judicial body charged with the responsibility to determine  
13        violations of Federal or State criminal drug statutes.

14        (4) CRIMINAL DRUG STATUTE.—The term “criminal drug statute”  
15        means a criminal statute involving manufacture, distribution, dispensa-  
16        tion, use, or possession of a controlled substance.

17        (5) DRUG-FREE WORKPLACE.—The term “drug-free workplace”  
18        means a site of an entity—

19            (A) for the performance of work done in connection with a spe-  
20            cific contract or grant described in section 8102 or 8103 of this  
21            title; and

22            (B) at which employees of the entity are prohibited from engag-  
23            ing in the unlawful manufacture, distribution, dispensation, pos-  
24            session, or use of a controlled substance in accordance with the  
25            requirements of the Anti-Drug Abuse Act of 1988 (Public Law  
26            100–690, 102 Stat. 4181).

27        (6) EMPLOYEE.—The term “employee” means the employee of a  
28        contractor or grantee directly engaged in the performance of work pur-  
29        suant to the contract or grant described in section 8102 or 8103 of  
30        this title.

31        (7) FEDERAL AGENCY.—The term “Federal agency” means an agen-  
32        cy as defined in section 552(f) of title 5.

33        (8) GRANTEE.—The term “grantee” means the department, division,  
34        or other unit of a person responsible for the performance under the  
35        grant.

36     (b) CONSTRUCTION.—This chapter does not require law enforcement  
37     agencies to comply with this chapter if the head of the agency determines  
38     it would be inappropriate in connection with the agency’s undercover oper-  
39     ations.

1 **§ 8102. Drug-free workplace requirements for Federal con-**  
2 **tractors**

3 (a) IN GENERAL.—

4 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an  
5 individual shall not be considered a responsible source (as defined in  
6 section 113 of this title) for the purposes of being awarded a contract  
7 for the procurement of any property or services of a value greater than  
8 the simplified acquisition threshold (as defined in section 134 of this  
9 title) by a Federal agency, other than a contract for the procurement  
10 of commercial items (as defined in section 103 of this title), unless the  
11 person agrees to provide a drug-free workplace by—

12 (A) publishing a statement notifying employees that the unlaw-  
13 ful manufacture, distribution, dispensation, possession, or use of  
14 a controlled substance is prohibited in the person's workplace and  
15 specifying the actions that will be taken against employees for vio-  
16 lations of the prohibition;

17 (B) establishing a drug-free awareness program to inform em-  
18 ployees about—

19 (i) the dangers of drug abuse in the workplace;

20 (ii) the person's policy of maintaining a drug-free work-  
21 place;

22 (iii) available drug counseling, rehabilitation, and employee  
23 assistance programs; and

24 (iv) the penalties that may be imposed on employees for  
25 drug abuse violations;

26 (C) making it a requirement that each employee to be engaged  
27 in the performance of the contract be given a copy of the state-  
28 ment required by subparagraph (A);

29 (D) notifying the employee in the statement required by sub-  
30 paragraph (A) that as a condition of employment on the contract  
31 the employee will—

32 (i) abide by the terms of the statement; and

33 (ii) notify the employer of any criminal drug statute convic-  
34 tion for a violation occurring in the workplace no later than  
35 5 days after the conviction;

36 (E) notifying the contracting agency within 10 days after receiv-  
37 ing notice under subparagraph (D)(ii) from an employee or other-  
38 wise receiving actual notice of a conviction;

39 (F) imposing a sanction on, or requiring the satisfactory partici-  
40 pation in a drug abuse assistance or rehabilitation program by,

1           any employee who is convicted, as required by section 8104 of this  
2           title; and

3           (G) making a good faith effort to continue to maintain a drug-  
4           free workplace through implementation of subparagraphs (A) to  
5           (F).

6           (2) INDIVIDUALS.—A Federal agency shall not make a contract with  
7           an individual unless the individual agrees not to engage in the unlawful  
8           manufacture, distribution, dispensation, possession, or use of a con-  
9           trolled substance in the performance of the contract.

10       (b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

11           (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—

12           Payment under a contract awarded by a Federal agency may be sus-  
13           pended and the contract may be terminated, and the contractor or indi-  
14           vidual who made the contract with the agency may be suspended or  
15           debarred in accordance with the requirements of this section, if the  
16           head of the agency determines that—

17           (A) the contractor is violating, or has violated, the requirements  
18           of subparagraph (A), (B), (C), (D), (E), or (F) of subsection  
19           (a)(1); or

20           (B) the number of employees of the contractor who have been  
21           convicted of violations of criminal drug statutes for violations oc-  
22           curring in the workplace indicates that the contractor has failed  
23           to make a good faith effort to provide a drug-free workplace as  
24           required by subsection (a).

25           (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT

26           PROCEEDINGS.—A contracting officer who determines in writing that  
27           cause for suspension of payments, termination, or suspension or debar-  
28           ment exists shall initiate an appropriate action, to be conducted by the  
29           agency concerned in accordance with the Federal Acquisition Regula-  
30           tion and applicable agency procedures. The Federal Acquisition Regula-  
31           tion shall be revised to include rules for conducting suspension and de-  
32           barment proceedings under this subsection, including rules providing  
33           notice, opportunity to respond in writing or in person, and other proce-  
34           dures as may be necessary to provide a full and fair proceeding to a  
35           contractor or individual.

36           (3) EFFECT OF DEBARMENT.—A contractor or individual debarred  
37           by a final decision under this subsection is ineligible for award of a  
38           contract by a Federal agency, and for participation in a future procure-  
39           ment by a Federal agency, for a period specified in the decision, not  
40           to exceed 5 years.

1 **§ 8103. Drug-free workplace requirements for Federal grant**  
2 **recipients**

3 (a) IN GENERAL.—

4 (1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an  
5 individual shall not receive a grant from a Federal agency unless the  
6 person agrees to provide a drug-free workplace by—

7 (A) publishing a statement notifying employees that the unlaw-  
8 ful manufacture, distribution, dispensation, possession, or use of  
9 a controlled substance is prohibited in the grantee's workplace and  
10 specifying the actions that will be taken against employees for vio-  
11 lations of the prohibition;

12 (B) establishing a drug-free awareness program to inform em-  
13 ployees about—

14 (i) the dangers of drug abuse in the workplace;

15 (ii) the grantee's policy of maintaining a drug-free work-  
16 place;

17 (iii) available drug counseling, rehabilitation, and employee  
18 assistance programs; and

19 (iv) the penalties that may be imposed on employees for  
20 drug abuse violations;

21 (C) making it a requirement that each employee to be engaged  
22 in the performance of the grant be given a copy of the statement  
23 required by subparagraph (A);

24 (D) notifying the employee in the statement required by sub-  
25 paragraph (A) that as a condition of employment in the grant the  
26 employee will—

27 (i) abide by the terms of the statement; and

28 (ii) notify the employer of any criminal drug statute convic-  
29 tion for a violation occurring in the workplace no later than  
30 5 days after the conviction;

31 (E) notifying the granting agency within 10 days after receiving  
32 notice under subparagraph (D)(ii) from an employee or otherwise  
33 receiving actual notice of a conviction;

34 (F) imposing a sanction on, or requiring the satisfactory partici-  
35 pation in a drug abuse assistance or rehabilitation program by,  
36 any employee who is convicted, as required by section 8104 of this  
37 title; and

38 (G) making a good faith effort to continue to maintain a drug-  
39 free workplace through implementation of subparagraphs (A) to  
40 (F).

1 (2) INDIVIDUALS.—A Federal agency shall not make a grant to an  
2 individual unless the individual agrees not to engage in the unlawful  
3 manufacture, distribution, dispensation, possession, or use of a con-  
4 trolled substance in conducting an activity with the grant.

5 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

6 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—

7 Payment under a grant awarded by a Federal agency may be sus-  
8 pended and the grant may be terminated, and the grantee may be sus-  
9 pended or debarred, in accordance with the requirements of this sec-  
10 tion, if the head of the agency or the official designee of the head of  
11 the agency determines in writing that—

12 (A) the grantee is violating, or has violated, the requirements  
13 of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection  
14 (a)(1); or

15 (B) the number of employees of the grantee who have been con-  
16 victed of violations of criminal drug statutes for violations occur-  
17 ring in the workplace indicates that the grantee has failed to make  
18 a good faith effort to provide a drug-free workplace as required  
19 by subsection (a)(1).

20 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT  
21 PROCEEDINGS.—A suspension of payments, termination, or suspension  
22 or debarment proceeding subject to this subsection shall be conducted  
23 in accordance with applicable law, including Executive Order 12549 or  
24 any superseding executive order and any regulations prescribed to im-  
25 plement the law or executive order.

26 (3) EFFECT OF DEBARMENT.—A grantee debarred by a final deci-  
27 sion under this subsection is ineligible for award of a grant by a Fed-  
28 eral agency, and for participation in a future grant by a Federal agen-  
29 cy, for a period specified in the decision, not to exceed 5 years.

30 **§ 8104. Employee sanctions and remedies**

31 Within 30 days after receiving notice from an employee of a conviction  
32 pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a  
33 contractor or grantee shall—

34 (1) take appropriate personnel action against the employee, up to  
35 and including termination; or

36 (2) require the employee to satisfactorily participate in a drug abuse  
37 assistance or rehabilitation program approved for those purposes by a  
38 Federal, State, or local health, law enforcement, or other appropriate  
39 agency.

1    **§ 8105. Waiver**

2       (a) IN GENERAL.—The head of an agency may waive a suspension of  
3    payments, termination of the contract or grant, or suspension or debarment  
4    of a contractor or grantee under this chapter with respect to a particular  
5    contract or grant if—

6           (1) in the case of a contract, the head of the agency determines  
7       under section 8102(b)(1) of this title, after a final determination is  
8       issued under section 8102(b)(1), that suspension of payments, termi-  
9       nation of the contract, suspension or debarment of the contractor, or  
10      refusal to permit a person to be treated as a responsible source for a  
11      contract would severely disrupt the operation of the agency to the det-  
12      riment of the Federal Government or the general public; or

13          (2) in the case of a grant, the head of the agency determines that  
14      suspension of payments, termination of the grant, or suspension or de-  
15      barment of the grantee would not be in the public interest.

16      (b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of  
17    the head of an agency under this section to waive a suspension, termination,  
18    or debarment shall not be delegated.

19    **§ 8106. Regulations**

20      Government-wide regulations governing actions under this chapter shall  
21    be issued pursuant to part B of subtitle I of this title.

22                                   **CHAPTER 83—BUY AMERICAN**

Sec.

- 8301. Definitions.
- 8302. American materials required for public use.
- 8303. Contracts for public works.
- 8304. Waiver rescission.
- 8305. Annual report.

23    **§ 8301. Definitions**

24      In this chapter:

25           (1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms  
26      “public building”, “public use”, and “public work” mean a public  
27      building of, use by, and a public work of, the Federal Government, the  
28      District of Columbia, Puerto Rico, American Samoa, and the Virgin Is-  
29      lands.

30           (2) UNITED STATES.—The term “United States” includes any place  
31      subject to the jurisdiction of the United States.

32    **§ 8302. American materials required for public use**

33      (a) IN GENERAL.—Only unmanufactured articles, materials, and supplies  
34    that have been mined or produced in the United States, and only manufac-  
35    tured articles, materials, and supplies that have been manufactured in the  
36    United States substantially all from articles, materials, or supplies mined,  
37    produced, or manufactured in the United States, shall be acquired for public

1 use unless the head of the department or independent establishment con-  
 2 cerned determines their acquisition to be inconsistent with the public inter-  
 3 est or their cost to be unreasonable.

4 (b) EXCEPTIONS.—This section does not apply—

5 (1) to articles, materials, or supplies for use outside the United  
 6 States;

7 (2) if articles, materials, or supplies of the class or kind to be used,  
 8 or the articles, materials, or supplies from which they are manufac-  
 9 tured, are not mined, produced, or manufactured in the United States  
 10 in sufficient and reasonably available commercial quantities and are not  
 11 of a satisfactory quality; and

12 (3) to manufactured articles, materials, or supplies procured under  
 13 any contract with an award value that is not more than the micro-pur-  
 14 chase threshold under section 1902 of this title.

15 **§ 8303. Contracts for public works**

16 (a) IN GENERAL.—Every contract for the construction, alteration, or re-  
 17 pair of any public building or public work in the United States shall contain  
 18 a provision that in the performance of the work the contractor, subcontractors,  
 19 material men, or suppliers shall use only—

20 (1) unmanufactured articles, materials, and supplies that have been  
 21 mined or produced in the United States; and

22 (2) manufactured articles, materials, and supplies that have been  
 23 manufactured in the United States substantially all from articles, mate-  
 24 rials, or supplies mined, produced, or manufactured in the United  
 25 States.

26 (b) EXCEPTIONS.—

27 (1) IN GENERAL.—This section does not apply—

28 (A) to articles, materials, or supplies for use outside the United  
 29 States;

30 (B) if articles, materials, or supplies of the class or kind to be  
 31 used, or the articles, materials, or supplies from which they are  
 32 manufactured, are not mined, produced, or manufactured in the  
 33 United States in sufficient and reasonably available commercial  
 34 quantities and are not of a satisfactory quality; and

35 (C) to manufactured articles, materials, or supplies procured  
 36 under any contract with an award value that is not more than the  
 37 micro-purchase threshold under section 1902 of this title.

38 (2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of  
 39 the department or independent establishment making the contract finds  
 40 that it is impracticable to comply with subsection (a) for a particular  
 41 article, material, or supply or that it would unreasonably increase the

1 cost, an exception shall be noted in the specifications for that article,  
2 material, or supply and a public record of the findings that justified  
3 the exception shall be made.

4 (3) INCONSISTENT WITH PUBLIC INTEREST.—Subsection (a) shall be  
5 regarded as requiring the purchase, for public use within the United  
6 States, of articles, materials, or supplies manufactured in the United  
7 States in sufficient and reasonably available commercial quantities and  
8 of a satisfactory quality, unless the head of the department or inde-  
9 pendent establishment concerned determines their purchase to be in-  
10 consistent with the public interest or their cost to be unreasonable.

11 (c) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bu-  
12 reau, agency, or independent establishment that has made a contract con-  
13 taining the provision required by subsection (a) finds that there has been  
14 a failure to comply with the provision in the performance of the contract,  
15 the head of the department, bureau, agency, or independent establishment  
16 shall make the findings public. The findings shall include the name of the  
17 contractor obligated under the contract. The contractor, and any subcon-  
18 tractor, material man, or supplier associated or affiliated with the con-  
19 tractor, shall not be awarded another contract for the construction, alter-  
20 ation, or repair of any public building or public work for 3 years after the  
21 findings are made public.

#### 22 **§ 8304. Waiver rescission**

23 (a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b)  
24 is a reciprocal defense procurement memorandum of understanding between  
25 the United States and a foreign country pursuant to which the Secretary  
26 of Defense has prospectively waived this chapter for certain products in that  
27 country.

28 (b) DETERMINATION BY SECRETARY OF DEFENSE.—If the Secretary of  
29 Defense, after consultation with the United States Trade Representative,  
30 determines that a foreign country that is party to an agreement described  
31 in subsection (a) has violated the agreement by discriminating against cer-  
32 tain types of products produced in the United States that are covered by  
33 the agreement, the Secretary of Defense shall rescind the Secretary's blan-  
34 ket waiver of this chapter with respect to those types of products produced  
35 in that country.

#### 36 **§ 8305. Annual report**

37 Not later than 60 days after the end of each fiscal year, the Secretary  
38 of Defense shall submit to Congress a report on the amount of purchases  
39 by the Department of Defense from foreign entities in that fiscal year. The  
40 report shall separately indicate the dollar value of items for which this chap-  
41 ter was waived pursuant to—

1 (1) a reciprocal defense procurement memorandum of understanding  
2 described in section 8304(a) of this title;

3 (2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

4 (3) an international agreement to which the United States is a party.

5 **CHAPTER 85—COMMITTEE FOR PURCHASE FROM**  
6 **PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

Sec.

8501. Definitions.

8502. Committee for Purchase From People Who Are Blind or Severely Disabled.

8503. Duties and powers of the Committee.

8504. Procurement requirements for the Federal Government.

8505. Audit.

8506. Authorization of appropriations.

7 **§ 8501. Definitions**

8 In this chapter:

9 (1) **BLIND.**—The term “blind” refers to an individual or class of in-  
10 dividuals whose central visual acuity does not exceed 20/200 in the bet-  
11 ter eye with correcting lenses or whose visual acuity, if better than 20/  
12 200, is accompanied by a limit to the field of vision in the better eye  
13 to such a degree that its widest diameter subtends an angle of no  
14 greater than 20 degrees.

15 (2) **COMMITTEE.**—The term “Committee” means the Committee for  
16 Purchase From People Who Are Blind or Severely Disabled established  
17 under section 8502 of this title.

18 (3) **DIRECT LABOR.**—The term “direct labor”—

19 (A) includes all work required for preparation, processing, and  
20 packing of a product, or work directly relating to the performance  
21 of a service; but

22 (B) does not include supervision, administration, inspection, or  
23 shipping.

24 (4) **ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERN-**  
25 **MENT.**—The terms “entity of the Federal Government” and “Federal  
26 Government” include an entity of the legislative or judicial branch, a  
27 military department or executive agency (as defined in sections 102  
28 and 105 of title 5, respectively), the United States Postal Service, and  
29 a nonappropriated fund instrumentality under the jurisdiction of the  
30 Armed Forces.

31 (5) **OTHER SEVERELY DISABLED.**—The term “other severely dis-  
32 abled” means an individual or class of individuals under a physical or  
33 mental disability, other than blindness, which (according to criteria es-  
34 tablished by the Committee after consultation with appropriate entities  
35 of the Federal Government and taking into account the views of non-  
36 Federal Government entities representing the disabled) constitutes a  
37 substantial handicap to employment and is of a nature that prevents

1 the individual from currently engaging in normal competitive employ-  
2 ment.

3 (6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DIS-  
4 ABLED.—The term “qualified nonprofit agency for other severely dis-  
5 abled” means an agency—

6 (A)(i) organized under the laws of the United States or a State;

7 (ii) operated in the interest of severely disabled individuals who  
8 are not blind; and

9 (iii) of which no part of the net income of the agency inures  
10 to the benefit of a shareholder or other individual;

11 (B) that complies with any applicable occupational health and  
12 safety standard prescribed by the Secretary of Labor; and

13 (C) that in the production of products and in the provision of  
14 services (whether or not the products or services are procured  
15 under this chapter) during the fiscal year employs blind or other  
16 severely disabled individuals for at least 75 percent of the hours  
17 of direct labor required for the production or provision of the  
18 products or services.

19 (7) QUALIFIED NONPROFIT AGENCY FOR THE BLIND.—The term  
20 “qualified nonprofit agency for the blind” means an agency—

21 (A)(i) organized under the laws of the United States or a State;

22 (ii) operated in the interest of blind individuals; and

23 (iii) of which no part of the net income of the agency inures  
24 to the benefit of a shareholder or other individual;

25 (B) that complies with any applicable occupational health and  
26 safety standard prescribed by the Secretary of Labor; and

27 (C) that in the production of products and in the provision of  
28 services (whether or not the products or services are procured  
29 under this chapter) during the fiscal year employs blind individ-  
30 uals for at least 75 percent of the hours of direct labor required  
31 for the production or provision of the products or services.

32 (8) SEVERELY DISABLED INDIVIDUAL.—The term “severely disabled  
33 individual” means an individual or class of individuals under a physical  
34 or mental disability, other than blindness, which (according to criteria  
35 established by the Committee after consultation with appropriate enti-  
36 ties of the Federal Government and taking into account the views of  
37 non-Federal Government entities representing the disabled) constitutes  
38 a substantial handicap to employment and is of a nature that prevents  
39 the individual from currently engaging in normal competitive employ-  
40 ment.

1           (9) STATE.—The term “State” includes the District of Columbia,  
2           Puerto Rico, the Virgin Islands, Guam, American Samoa, and the  
3           Northern Mariana Islands.

4   **§ 8502. Committee for Purchase From People Who Are Blind**  
5           **or Severely Disabled**

6           (a) ESTABLISHMENT.—There is a Committee for Purchase From People  
7   Who Are Blind or Severely Disabled.

8           (b) COMPOSITION.—The Committee consists of 15 members appointed by  
9   the President as follows:

10           (1) One officer or employee from each of the following, nominated  
11   by the head of the department or agency:

12                   (A) The Department of Agriculture.

13                   (B) The Department of Defense.

14                   (C) The Department of the Army.

15                   (D) The Department of the Navy.

16                   (E) The Department of the Air Force.

17                   (F) The Department of Education.

18                   (G) The Department of Commerce.

19                   (H) The Department of Veterans Affairs.

20                   (I) The Department of Justice.

21                   (J) The Department of Labor.

22                   (K) The General Services Administration.

23           (2) One member from individuals who are not officers or employees  
24   of the Federal Government and who are conversant with the problems  
25   incident to the employment of the blind.

26           (3) One member from individuals who are not officers or employees  
27   of the Federal Government and who are conversant with the problems  
28   incident to the employment of other severely disabled individuals.

29           (4) One member from individuals who are not officers or employees  
30   of the Federal Government and who represent blind individuals em-  
31   ployed in qualified nonprofit agencies for the blind.

32           (5) One member from individuals who are not officers or employees  
33   of the Federal Government and who represent severely disabled individ-  
34   uals (other than blind individuals) employed in qualified nonprofit  
35   agencies for other severely disabled individuals.

36           (c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3),  
37   (4), or (5) of subsection (b) shall be appointed for terms of 5 years and  
38   may be reappointed if the member meets the qualifications prescribed by  
39   those paragraphs.

40           (d) CHAIRMAN.—The members of the Committee shall elect one of the  
41   members to be Chairman.

1 (e) VACANCY.—

2 (1) MANNER IN WHICH FILLED.—A vacancy in the membership of  
3 the Committee shall be filled in the manner in which the original ap-  
4 pointment was made.

5 (2) UNFULFILLED TERM.—A member appointed under paragraph  
6 (2), (3), (4), or (5) of subsection (b) to fill a vacancy occurring prior  
7 to the expiration of the term for which the predecessor was appointed  
8 shall be appointed only for the remainder of the term. The member  
9 may serve after the expiration of a term until a successor takes office.

10 (f) PAY AND TRAVEL EXPENSES.—

11 (1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as pro-  
12 vided in paragraph (2), members of the Committee are entitled to re-  
13 ceive the daily equivalent of the maximum annual rate of basic pay  
14 payable under section 5376 of title 5 for each day (including travel-  
15 time) during which they perform services for the Committee. A member  
16 is entitled to travel expenses, including a per diem allowance instead  
17 of subsistence, as provided under section 5703 of title 5.

18 (2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—  
19 Members who are officers or employees of the Federal Government may  
20 not receive additional pay because of their service on the Committee.

21 (g) STAFF.—

22 (1) APPOINTMENT AND COMPENSATION.—Subject to rules the Com-  
23 mittee may adopt and to chapters 33 and 51 and subchapter III of  
24 chapter 53 of title 5, the Chairman may appoint and fix the pay of  
25 personnel the Committee determines are necessary to assist it in car-  
26 rying out this chapter.

27 (2) PERSONNEL FROM OTHER ENTITIES.—On request of the Com-  
28 mittee, the head of an entity of the Federal Government may detail,  
29 on a reimbursable basis, any personnel of the entity to the Committee  
30 to assist it in carrying out this chapter.

31 (h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure di-  
32 rectly from an entity of the Federal Government information necessary to  
33 enable it to carry out this chapter. On request of the Chairman, the head  
34 of the entity shall furnish the information to the Committee.

35 (i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General  
36 Services shall provide to the Committee, on a reimbursable basis, adminis-  
37 trative support services the Committee requests.

38 (j) ANNUAL REPORT.—Not later than December 31 of each year, the  
39 Committee shall transmit to the President a report that includes the names  
40 of the Committee members serving in the prior fiscal year, the dates of  
41 Committee meetings in that year, a description of the activities of the Com-

1 mittee under this chapter in that year, and any recommendations for  
2 changes in this chapter which the Committee determines are necessary.

3 **§ 8503. Duties and powers of the Committee**

4 (a) PROCUREMENT LIST.—

5 (1) MAINTENANCE OF LIST.—The Committee shall maintain and  
6 publish in the Federal Register a procurement list. The list shall in-  
7 clude the following products and services determined by the Committee  
8 to be suitable for the Federal Government to procure pursuant to this  
9 chapter:

10 (A) Products produced by a qualified nonprofit agency for the  
11 blind or by a qualified nonprofit agency for other severely disabled.

12 (B) The services those agencies provide.

13 (2) CHANGES TO LIST.—The Committee may, by rule made in ac-  
14 cordance with the requirements of section 553(b) to (e) of title 5, add  
15 to and remove from the procurement list products so produced and  
16 services so provided.

17 (b) FAIR MARKET PRICE.—The Committee shall determine the fair mar-  
18 ket price of products and services contained on the procurement list that  
19 are offered for sale to the Federal Government by a qualified nonprofit  
20 agency for the blind or a qualified nonprofit agency for other severely dis-  
21 abled. The Committee from time to time shall revise its price determinations  
22 with respect to those products and services in accordance with changing  
23 market conditions.

24 (c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall  
25 designate a central nonprofit agency or agencies to facilitate the distribu-  
26 tion, by direct allocation, subcontract, or any other means, of orders of the  
27 Federal Government for products and services on the procurement list  
28 among qualified nonprofit agencies for the blind or qualified nonprofit agen-  
29 cies for other severely disabled.

30 (d) REGULATIONS.—The Committee—

31 (1) may prescribe regulations regarding specifications for products  
32 and services on the procurement list, the time of their delivery, and  
33 other matters as necessary to carry out this chapter; and

34 (2) shall prescribe regulations providing that when the Federal Gov-  
35 ernment purchases products produced and offered for sale by qualified  
36 nonprofit agencies for the blind or qualified nonprofit agencies for  
37 other severely disabled, priority shall be given to products produced and  
38 offered for sale by qualified nonprofit agencies for the blind.

39 (e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall  
40 make a continuing study and evaluation of its activities under this chapter  
41 to ensure effective and efficient administration of this chapter. The Com-

1 mittee on its own or in cooperation with other public or nonprofit private  
2 agencies may study—

3 (1) problems related to the employment of the blind and other se-  
4 verely disabled individuals; and

5 (2) the development and adaptation of production methods that  
6 would enable a greater utilization of the blind and other severely dis-  
7 abled individuals.

8 **§ 8504. Procurement requirements for the Federal Govern-**  
9 **ment**

10 (a) IN GENERAL.—An entity of the Federal Government intending to pro-  
11 cure a product or service on the procurement list referred to in section 8503  
12 of this title shall procure the product or service from a qualified nonprofit  
13 agency for the blind or a qualified nonprofit agency for other severely dis-  
14 abled in accordance with regulations of the Committee and at the price the  
15 Committee establishes if the product or service is available within the period  
16 required by the entity.

17 (b) EXCEPTION.—This section does not apply to the procurement of a  
18 product that is available from an industry established under chapter 307  
19 of title 18 and that is required under section 4124 of title 18 to be procured  
20 from that industry.

21 **§ 8505. Audit**

22 For the purpose of audit and examination, the Comptroller General shall  
23 have access to the books, documents, papers, and other records of—

24 (1) the Committee and of each central nonprofit agency the Com-  
25 mittee designates under section 8503(c) of this title; and

26 (2) qualified nonprofit agencies for the blind and qualified nonprofit  
27 agencies for other severely disabled that have sold products or services  
28 under this chapter to the extent those books, documents, papers, and  
29 other records relate to the activities of the agency in a fiscal year in  
30 which a sale was made under this chapter.

31 **§ 8506. Authorization of appropriations**

32 Necessary amounts may be appropriated to the Committee to carry out  
33 this chapter.

34 **CHAPTER 87—KICKBACKS**

Sec.

- 8701. Definitions.
- 8702. Prohibited conduct.
- 8703. Contractor responsibilities.
- 8704. Inspection authority.
- 8705. Administrative offsets.
- 8706. Civil actions.
- 8707. Criminal penalties.

35 **§ 8701. Definitions**

36 In this chapter:

1 (1) CONTRACTING AGENCY.—The term “contracting agency”, when  
 2 used with respect to a prime contractor, means a department, agency,  
 3 or establishment of the Federal Government that enters into a prime  
 4 contract with a prime contractor.

5 (2) KICKBACK.—The term “kickback” means any money, fee, com-  
 6 mission, credit, gift, gratuity, thing of value, or compensation of any  
 7 kind that is provided to a prime contractor, prime contractor employee,  
 8 subcontractor, or subcontractor employee to improperly obtain or re-  
 9 ward favorable treatment in connection with a prime contract or a sub-  
 10 contract relating to a prime contract.

11 (3) PRIME CONTRACT.—The term “prime contract” means a con-  
 12 tract or contractual action entered into by the Federal Government to  
 13 obtain supplies, materials, equipment, or services of any kind.

14 (4) PRIME CONTRACTOR.—The term “prime contractor” means a  
 15 person that has entered into a prime contract with the Federal Govern-  
 16 ment.

17 (5) PRIME CONTRACTOR EMPLOYEE.—The term “prime contractor  
 18 employee” means an officer, partner, employee, or agent of a prime  
 19 contractor.

20 (6) SUBCONTRACT.—The term “subcontract” means a contract or  
 21 contractual action entered into by a prime contractor or subcontractor  
 22 to obtain supplies, materials, equipment, or services of any kind under  
 23 a prime contract.

24 (7) SUBCONTRACTOR.—The term “subcontractor”—

25 (A) means a person, other than the prime contractor, that offers  
 26 to furnish or furnishes supplies, materials, equipment, or services  
 27 of any kind under a prime contract or a subcontract entered into  
 28 in connection with the prime contract; and

29 (B) includes a person that offers to furnish or furnishes general  
 30 supplies to the prime contractor or a higher tier subcontractor.

31 (8) SUBCONTRACTOR EMPLOYEE.—The term “subcontractor em-  
 32 ployee” means an officer, partner, employee, or agent of a subcon-  
 33 tractor.

### 34 § 8702. Prohibited conduct

35 A person may not—

36 (1) provide, attempt to provide, or offer to provide a kickback;

37 (2) solicit, accept, or attempt to accept a kickback; or

38 (3) include the amount of a kickback prohibited by paragraph (1)  
 39 or (2) in the contract price—

40 (A) a subcontractor charges a prime contractor or a higher tier  
 41 subcontractor; or

1 (B) a prime contractor charges the Federal Government.

2 **§ 8703. Contractor responsibilities**

3 (a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency  
4 shall include in each prime contract awarded by the agency a requirement  
5 that the prime contractor shall—

6 (1) have in place and follow reasonable procedures designed to pre-  
7 vent and detect violations of section 8702 of this title in its own oper-  
8 ations and direct business relationships; and

9 (2) cooperate fully with a Federal Government agency investigating  
10 a violation of section 8702 of this title.

11 (b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a  
12 prime contractor shall cooperate fully with a Federal Government agency in-  
13 vestigating a violation of section 8702 of this title.

14 (c) REPORTING REQUIREMENT.—

15 (1) IN GENERAL.—A prime contractor or subcontractor that has rea-  
16 sonable grounds to believe that a violation of section 8702 of this title  
17 may have occurred shall promptly report the possible violation in writ-  
18 ing to the inspector general of the contracting agency, the head of the  
19 contracting agency if the agency does not have an inspector general,  
20 or the Attorney General.

21 (2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an ad-  
22 ministrative or contractual action to suspend or debar a person who is  
23 eligible to enter into contracts with the Federal Government, evidence  
24 that the person has supplied information to the Federal Government  
25 pursuant to paragraph (1) is favorable evidence of the person's respon-  
26 sibility for the purposes of Federal procurement laws and regulations.

27 (d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a)  
28 does not apply to a prime contract—

29 (1) that is not greater than \$100,000; or

30 (2) for the acquisition of commercial items (as defined in section 103  
31 of this title).

32 **§ 8704. Inspection authority**

33 (a) IN GENERAL.—To ascertain whether there has been a violation of sec-  
34 tion 8702 of this title with respect to a prime contract, the Comptroller  
35 General and the inspector general of the contracting agency, or a represent-  
36 ative of the contracting agency designated by the head of the agency if the  
37 agency does not have an inspector general, shall have access to and may  
38 inspect the facilities and audit the books and records, including electronic  
39 data or records, of a prime contractor or subcontractor under a prime con-  
40 tract awarded by the agency.

1 (b) EXCEPTION.—This section does not apply to a prime contract for the  
2 acquisition of commercial items (as defined in section 103 of this title).

3 **§ 8705. Administrative offsets**

4 (a) DEFINITION.—In this section, the term “contracting officer” has the  
5 meaning given that term in chapter 69 of this title.

6 (b) OFFSET AUTHORITY.—A contracting officer of a contracting agency  
7 may offset the amount of a kickback provided, accepted, or charged in viola-  
8 tion of section 8702 of this title against amounts the Federal Government  
9 owes the prime contractor under the prime contract to which the kickback  
10 relates.

11 (c) DUTIES OF PRIME CONTRACTOR.—

12 (1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On  
13 direction of a contracting officer of a contracting agency with respect  
14 to a prime contract, the prime contractor shall withhold from amounts  
15 owed to a subcontractor under a subcontract of the prime contract the  
16 amount of a kickback which was or may be offset against the prime  
17 contractor under subsection (b). The contracting officer may order that  
18 amounts withheld—

19 (A) be paid over to the contracting agency; or

20 (B) be retained by the prime contractor if the Federal Govern-  
21 ment has already offset the amount against the prime contractor.

22 (2) NOTICE.—The prime contractor shall notify the contracting offi-  
23 cer when an amount is withheld and retained under paragraph (1)(B).

24 (d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERN-  
25 MENT.—An offset under subsection (b) or a direction or order of a con-  
26 tracting officer under subsection (c) is a claim by the Federal Government  
27 for the purposes of chapter 69 of this title.

28 **§ 8706. Civil actions**

29 (a) AMOUNT.—The Federal Government in a civil action may recover  
30 from a person—

31 (1) that knowingly engages in conduct prohibited by section 8702 of  
32 this title a civil penalty equal to—

33 (A) twice the amount of each kickback involved in the violation;

34 and

35 (B) not more than \$10,000 for each occurrence of prohibited  
36 conduct; and

37 (2) whose employee, subcontractor, or subcontractor employee vio-  
38 lates section 8702 of this title by providing, accepting, or charging a  
39 kickback a civil penalty equal to the amount of that kickback.

40 (b) STATUTE OF LIMITATIONS.—A civil action under this section must be  
41 brought within 6 years after the later of the date on which—

- 1 (1) the prohibited conduct establishing the cause of action occurred;  
 2 or  
 3 (2) the Federal Government first knew or should reasonably have  
 4 known that the prohibited conduct had occurred.

5 **§ 8707. Criminal penalties**

6 A person that knowingly and willfully engages in conduct prohibited by  
 7 section 8702 of this title shall be fined under title 18, imprisoned for not  
 8 more than 10 years, or both.

9 **SEC. 4. CONFORMING AMENDMENT.**

10 Section 2410i(b)(1) of title 10, United States Code, is amended by strik-  
 11 ing “small purchase threshold” and substituting “simplified acquisition  
 12 threshold”.

13 **SEC. 5. CONFORMING CROSS-REFERENCES.**

14 (a) TITLE 5.—Title 5, United States Code, is amended as follows:

- 15 (1) In section 504(b)(1)(C)(ii)—  
 16 (A) strike “section 6 of the Contract Disputes Act of 1978 (41  
 17 U.S.C. 605)” and substitute “section 6903 of title 41”; and  
 18 (B) strike “section 8 of that Act (41 U.S.C. 607)” and sub-  
 19 stitute “section 6905 of title 41”.  
 20 (2) In section 551(1)(H), strike “chapter 2 of title 41;”.  
 21 (3) In section 595(c)(10), strike “title III of the Federal Property  
 22 and Administrative Services Act of 1949, as amended (41 U.S.C. 251–  
 23 260)” and substitute “part C of subtitle I of title 41”.  
 24 (4) In section 701(b)(1)(H), strike “chapter 2 of title 41;”.  
 25 (5) In section 3109(b)(3), strike “section 5” and substitute “section  
 26 6101(b) to (d)”.  
 27 (6) In section 3374(c)(2), strike “section 27 of the Office of Federal  
 28 Procurement Policy Act” and substitute “chapter 21 of title 41”.  
 29 (7) In section 3704(b)(2)(G), strike “section 27 of the Office of Fed-  
 30 eral Procurement Policy Act” and substitute “chapter 21 of title 41”.  
 31 (8) In section 4105, strike “section 5” and substitute “section  
 32 6101(b) to (d)”.  
 33 (9) In section 5102(e)(30), strike “section 8 of the Contract Dis-  
 34 putes Act of 1978” and substitute “section 6905 of title 41”.  
 35 (10) In section 5372a—  
 36 (A) in subsection (a)(1), strike “section 8 of the Contract Dis-  
 37 putes Act of 1978” and substitute “section 6905 of title 41”; and  
 38 (B) in subsection (a)(2), strike “section 8 of the Contract Dis-  
 39 putes Act of 1978” and substitute “section 6905 of title 41”.

1 (11) In section 7342(e)(1), strike “title III of the Federal Property  
2 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
3 substitute “part C of subtitle I of title 41”.

4 (12) In section 8709(a), strike “section 5” and substitute “section  
5 6101(b) to (d)”.

6 (13) In section 8714a(a), strike “section 5” and substitute “section  
7 6101(b) to (d)”.

8 (14) In section 8714b(a), strike “section 5” and substitute “section  
9 6101(b) to (d)”.

10 (15) In section 8714c(a), strike “section 5” and substitute “section  
11 6101(b) to (d)”.

12 (16) In section 8902(a), strike “section 5” and substitute “section  
13 6101(b) to (d)”.

14 (17) In section 8953(a)(1), strike “section 5” and substitute “sec-  
15 tion 6101(b) to (d)”.

16 (18) In section 8983(a)(1), strike “section 5” and substitute “sec-  
17 tion 6101(b) to (d)”.

18 (19) In section 9003—

19 (A) in subsection (a), strike “section 5” and substitute “section  
20 6101(b) to (d)”;

21 (B) in subsection (c)(3), before subparagraph (A), strike “the  
22 Contract Disputes Act of 1978” and substitute “chapter 69 of  
23 title 41”;

24 (C) in subsection (c)(3)(A), strike “section 8(c) of such Act”  
25 and substitute “section 6905(e) of title 41”; and

26 (D) in subsection (c)(3)(B), strike “section 10(a)(1) of such  
27 Act” and substitute “section 6904(b)(1) of title 41”.

28 (20) In section 9009, strike “section 26(f) of the Office of Federal  
29 Procurement Policy Act (41 U.S.C. 422(f))” and substitute “section  
30 1502(a) and (b) of title 41”.

31 (b) TITLE 10.—Title 10, United States Code, is amended as follows:

32 (1) In section 133(c)(1), strike “section 16(3) of the Office of Fed-  
33 eral Procurement Policy Act (41 U.S.C. 414(3))” and substitute “sec-  
34 tion 1702(c) of title 41”.

35 (2) In section 2013(a), strike “section 3709 of the Revised Statutes  
36 (41 U.S.C. 5)” and substitute “section 6101(b)–(d) of title 41”.

37 (3) In section 2194(b)(2), strike “title III of the Federal Property  
38 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
39 substitute “part C of subtitle I of title 41”.

40 (4) In section 2201—

1 (A) in subsection (b), strike “section 3732(a) of the Revised  
2 Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and  
3 (b)(1)–(3) of title 41”; and

4 (B) in subsection (c), strike “section 3732(a) of the Revised  
5 Statutes (41 U.S.C. 11(a))” and substitute “section 6301(a) and  
6 (b)(1)–(3) of title 41”.

7 (5) In section 2207(b), strike “section 4(11) of the Office of Federal  
8 Procurement Policy Act (41 U.S.C. 403(11))” and substitute “section  
9 134 of title 41”.

10 (6) In section 2225(f)—

11 (A) in paragraph (1), strike “section 16(3) of the Office of Fed-  
12 eral Procurement Policy Act (41 U.S.C. 414(3))” and substitute  
13 “section 1702(e) of title 41”; and

14 (B) in paragraph (2), strike “section 4(11) of the Office of Fed-  
15 eral Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
16 “section 134 of title 41”.

17 (7) In section 2226(b), strike “section 4(12) of the Office of Federal  
18 Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section  
19 103 of title 41”.

20 (8) In section 2302—

21 (A) in paragraph (3), strike “section 4 of the Office of Federal  
22 Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter  
23 1 of title 41”;

24 (B) in paragraph (6), strike “section 25(c)(1) of the Office of  
25 Federal Procurement Policy Act (41 U.S.C. 421(c)(1))” and sub-  
26 stitute “section 1303(a)(1) of title 41”; and

27 (C) in paragraph (7), strike “section 4 of the Office of Federal  
28 Procurement Policy Act (41 U.S.C. 403)” and substitute “section  
29 133 of title 41”.

30 (9) In section 2302a—

31 (A) in subsection (a), strike “section 4(11) of the Office of Fed-  
32 eral Procurement Policy Act” and substitute “section 134 of title  
33 41”; and

34 (B) in subsection (b), strike “section 33 of the Office of Federal  
35 Procurement Policy Act” and substitute “section 1905 of title  
36 41”.

37 (10) In section 2302b, strike “section 31 of the Office of Federal  
38 Procurement Policy Act” and substitute “section 1901 of title 41”.

39 (11) In section 2302c—

1 (A) in subsection (a)(1), strike “section 30 of the Office of Fed-  
2 eral Procurement Policy Act (41 U.S.C. 426)” and substitute  
3 “section 2301 of title 41”; and

4 (B) in subsection (b), strike “section 16(3) of the Office of Fed-  
5 eral Procurement Policy Act (41 U.S.C. 414(3))” and substitute  
6 “section 1702(e) of title 41”.

7 (12) In section 2304—

8 (A) in subsection (f)(1)(B)(iii), strike “section 16(3) of the Of-  
9 fice of Federal Procurement Policy Act (41 U.S.C. 414(3))” and  
10 substitute “section 1702(e) of title 41”;

11 (B) in subsection (f)(1)(C), strike “section 18 of the Office of  
12 Federal Procurement Policy Act (41 U.S.C. 416)” and substitute  
13 “section 1707 of title 41”;

14 (C) in subsection (f)(2)(D), strike “the Javits-Wagner-O’Day  
15 Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title  
16 41”;

17 (D) in subsection (g)(4), strike “section 31(f) of the Office of  
18 Federal Procurement Policy Act (41 U.S.C. 427)” and substitute  
19 “section 1901(f) of title 41”; and

20 (E) in subsection (h)(1), strike “The Walsh-Healey Act (41  
21 U.S.C. 35 et seq.)” and substitute “Chapter 65 of title 41”.

22 (13) In section 2304b—

23 (A) in subsection (c), strike “section 18 of the Office of Federal  
24 Procurement Policy Act (41 U.S.C. 416)” and substitute “section  
25 1707 of title 41”; and

26 (B) in subsection (f)(3), strike “section 18 of the Office of Fed-  
27 eral Procurement Policy Act (41 U.S.C. 416)” and substitute  
28 “section 1707 of title 41”.

29 (14) In section 2304c(a)(1), strike “section 18 of the Office of Fed-  
30 eral Procurement Policy Act (41 U.S.C. 416)” and substitute “section  
31 1707 of title 41”.

32 (15) In section 2306a(h)(3), strike “section 4(12) of the Office of  
33 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
34 “section 103 of title 41”.

35 (16) In section 2314, strike “Sections 3709 and 3735 of the Revised  
36 Statutes (41 U.S.C. 5 and 13)” and substitute “Sections 6101(b)–(d)  
37 and 6304 of title 41”.

38 (17) In section 2318—

39 (A) in subsection (a)(1), strike “section 20(a) of the Office of  
40 Federal Procurement Policy Act (41 U.S.C. 418(a))” and sub-  
41 stitute “section 1704(a) of title 41”; and

1 (B) in subsection (a)(2), strike “sections 20(b) and 20(e) of the  
2 Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (e))”  
3 and substitute “section 1704(b) and (c) of title 41”.

4 (18) In section 2321(h), strike “the Contract Disputes Act of 1978  
5 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”.

6 (19) In section 2324—

7 (A) in subsection (d)(1), strike “section 6 of the Contract Dis-  
8 putes Act of 1978 (41 U.S.C. 605)” and substitute “section 6903  
9 of title 41”;

10 (B) in subsection (d)(2), strike “section 7 of such Act (41  
11 U.S.C. 606)” and substitute “section 6904(a) of title 41”;

12 (C) in subsection (e)(1)(P), strike “section 39 of the Office of  
13 Federal Procurement Policy Act (41 U.S.C. 435)” and substitute  
14 “section 1127 of title 41”; and

15 (D) in subsection (e)(2)(C), strike “(41 U.S.C. 10b–1)” and  
16 substitute “(as added by section 7002(2) of the Omnibus Trade  
17 and Competitiveness Act of 1988)”.

18 (20) In section 2343, strike “section 3741 of the Revised Statutes  
19 (41 U.S.C. 22)” and substitute “section 6306 of title 41”.

20 (21) In section 2375(b), strike “section 34 of the Office of Federal  
21 Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906  
22 of title 41”.

23 (22) In section 2376(1), strike “section 4 of the Office of Federal  
24 Procurement Policy Act (41 U.S.C. 403)” and substitute “chapter 1  
25 of title 41”.

26 (23) In section 2384—

27 (A) in subsection (b)(2), strike “section 4(12) of the Office of  
28 Federal Procurement Policy Act (41 U.S.C. 403(12))” and sub-  
29 stitute “section 103 of title 41”; and

30 (B) in subsection (b)(3), strike “section 4(11) of the Office of  
31 Federal Procurement Policy Act (41 U.S.C. 403(11))” and sub-  
32 stitute “section 134 of title 41”.

33 (24) In section 2393(d)—

34 (A) strike “section 4(11) of the Office of Federal Procurement  
35 Policy Act (41 U.S.C. 403(11))” and substitute “section 134 of  
36 title 41”; and

37 (B) strike “section 4(12) of the Office of Federal Procurement  
38 Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of  
39 title 41”.

40 (25) In section 2402—

1 (A) in subsection (c), strike “section 4(11) of the Office of Fed-  
2 eral Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
3 “section 134 of title 41”; and

4 (B) in subsection (d)(2), strike “section 4(12) of the Office of  
5 Federal Procurement Policy Act (41 U.S.C. 403(12))” and sub-  
6 stitute “section 103 of title 41”.

7 (26) In section 2408—

8 (A) in subsection (a)(4)(A), strike “section 4(11) of the Office  
9 of Federal Procurement Policy Act (41 U.S.C. 403(11))” and  
10 substitute “section 134 of title 41”; and

11 (B) in subsection (a)(4)(B), strike “section 4(12) of the Office  
12 of Federal Procurement Policy Act (41 U.S.C. 403(12))” and  
13 substitute “section 103 of title 41”.

14 (27) In section 2410(c), strike “section 4(11) of the Office of Fed-  
15 eral Procurement Policy Act” and substitute “section 134 of title 41”.

16 (28) In section 2410b(e), strike “section 4(12) of the Office of Fed-  
17 eral Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
18 “section 103 of title 41”.

19 (29) In section 2410d—

20 (A) in subsection (b)(2)(A), strike “section 5(3) of the Javits-  
21 Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section  
22 8501(8) of title 41”;

23 (B) in subsection (b)(2)(B), strike “handicapped, as defined in  
24 section 5(4) of such Act (41 U.S.C. 48b(4))” and substitute “dis-  
25 abled, as defined in section 8501(7) of title 41”; and

26 (C) in subsection (b)(2)(C), strike “section 2(e) of such Act (41  
27 U.S.C. 47(e))” and substitute “section 8503(c) of title 41”.

28 (30) In section 2410g(d)(1), strike “section 4(12) of the Office of  
29 Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute  
30 “section 103 of title 41”.

31 (31) In section 2410i(b)(1), strike “section 4(11) of the Office of  
32 Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
33 “section 134 of title 41”.

34 (32) In section 2410m—

35 (A) in subsection (a), before paragraph (1), strike “the Contract  
36 Disputes Act of 1978 (41 U.S.C. 601 et seq.)” and substitute  
37 “chapter 69 of title 41”;

38 (B) in subsection (a)(2), strike “section 7 of such Act (41  
39 U.S.C. 606)” and substitute “section 6904(a) of title 41”; and

1 (C) in subsection (b)(1)(A), strike “section 10(a) of the Con-  
2 tract Disputes Act of 1978 (41 U.S.C. 609(a))” and substitute  
3 “section 6904(b) of title 41”.

4 (33) In section 2457(e), strike “section 2 of the Buy American Act  
5 (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

6 (34) In section 2461(e)(1), strike “section 2 of the Javits-Wagner-  
7 O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title 41”.

8 (35) In section 2482(b)(1), strike “section 4(6) of the Office of Fed-  
9 eral Procurement Policy Act (41 U.S.C. 403(6))” and substitute “sec-  
10 tion 107 of title 41”.

11 (36) In the chapter analysis for subchapter V of chapter 148, in the  
12 item for section 2533, strike “the Buy American Act” and substitute  
13 “chapter 83 of title 41”.

14 (37) In section 2533—

15 (A) in the section catchline, strike “**the Buy American**  
16 **Act**” and substitute “**chapter 83 of title 41**”; and

17 (B) in subsection (a), strike “section 2 of the Buy American Act  
18 (41 U.S.C. 10a)” and substitute “section 8302 of title 41”.

19 (38) In section 2533a(i), strike “section 34 of the Office of Federal  
20 Procurement Policy Act (41 U.S.C. 430)” and substitute “section 1906  
21 of title 41”.

22 (39) In section 2534(g)(2), strike “section 33 of the Office of Fed-  
23 eral Procurement Policy Act (41 U.S.C. 429)” and substitute “section  
24 1905 of title 41”.

25 (40) In section 2562(a)(1), strike “title III of the Federal Property  
26 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
27 substitute “part C of subtitle I of title 41”.

28 (41) In section 2576(a), strike “title III of the Federal Property and  
29 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
30 stitute “part C of subtitle I of title 41”.

31 (42) In section 2636(b)(3), strike “section 4(11) of the Office of  
32 Federal Procurement Policy Act (41 U.S.C. 403(11))” and substitute  
33 “section 134 of title 41”.

34 (43) In section 2667(f)(1), strike “Notwithstanding subsection (a)(3)  
35 or subtitle I of title 40 and title III of the Federal Property and Ad-  
36 ministrative Services Act of 1949 (to the extent subtitle I and title III  
37 are inconsistent with this subsection)” and substitute “Notwithstanding  
38 subtitle I of title 40 and part C of subtitle I of title 41 (to the extent  
39 those provisions are inconsistent with this subsection) or subsection  
40 (a)(2) of this section”.

1 (44) In section 2676(a), strike “title III of the Federal Property and  
2 Administrative Services Act of 1949, as amended (41 U.S.C. 251 et  
3 seq.)” and substitute “part C of subtitle I of title 41”.

4 (45) In section 2691(b), strike “title III of the Federal Property and  
5 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
6 stitute “part C of subtitle I of title 41”.

7 (46) In section 2696(a), strike “title III of the Federal Property and  
8 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
9 stitute “part C of subtitle I of title 41”.

10 (47) In section 2701(i)(1), in the heading, strike “MILLER ACT” and  
11 substitute “SECTIONS 3131 AND 3133 OF TITLE 40”.

12 (48) In section 2836(g), strike “the Contract Disputes Act of 1978  
13 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”.

14 (49) In section 2854a(d)(1), strike “title III of the Federal Property  
15 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
16 substitute “part C of subtitle I of title 41”.

17 (50) In section 2878(d)(2), strike “title III of the Federal Property  
18 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
19 substitute “part C of subtitle I of title 41”.

20 (51) In the chapter analysis for chapter 633, in the item for section  
21 7299, strike “Walsh-Healey Act” and substitute “chapter 65 of title  
22 41”.

23 (52) In section 7299—

24 (A) in the heading, strike “Walsh-Healey Act” and substitute  
25 “chapter 65 of title 41”; and

26 (B) strike “the Walsh-Healey Act (41 U.S.C. 35 et seq.)” and  
27 substitute “chapter 65 of title 41”.

28 (53) In section 7305(d)—

29 (A) strike “title III of the Federal Property and Administrative  
30 Services Act of 1949 (41 U.S.C. 251 et seq.)” and substitute  
31 “part C of subtitle I of title 41”; and

32 (B) strike “under subtitle I of title 40 and such title III” and  
33 substitute “under those provisions”.

34 (54) In section 9444(b)(1), strike “title III of the Federal Property  
35 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
36 substitute “part C of subtitle I of title 41”.

37 (55) In section 9781(g), strike “title III of the Federal Property and  
38 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
39 stitute “part C of subtitle I of title 41”.

40 (e) TITLE 14.—Title 14, United States Code, is amended as follows:

1 (1) In section 92(d), strike “title III of the Federal Property and  
2 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
3 stitute “part C of subtitle I of title 41”.

4 (2) In section 93(h), strike “title III of the Federal Property and  
5 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
6 stitute “part C of subtitle I of title 41”.

7 (3) In section 641(a), strike “title III of the Federal Property and  
8 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
9 stitute “part C of subtitle I of title 41”.

10 (4) In section 685(e)(1), strike “title III of the Federal Property and  
11 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
12 stitute “part C of subtitle I of title 41”.

13 (d) TITLE 18.—Title 18, United States Code, is amended as follows:

14 (1) In section 3672, strike “section 3709 of the Revised Statutes of  
15 the United States” and substitute “section 6101(b) to (d) of title 41”.

16 (2) In section 4124(c), strike “section 6(d)(4) of the Office of Fed-  
17 eral Procurement Policy Act” and substitute “section 1122(a)(4) of  
18 title 41”.

19 (e) TITLE 23.—Title 23, United States Code, is amended as follows:

20 (1) In section 107(a), strike “the Act of February 26, 1931, 46 Stat.  
21 1421” and substitute “sections 3114 to 3116 and 3118 of title 40”.

22 (2) In section 140—

23 (A) in subsection (b), strike “section 3709 of the Revised Stat-  
24 utes, as amended (41 U.S.C. 5),” and substitute “section 6101(b)  
25 to (d) of title 41”; and

26 (B) in subsection (c)—

27 (i) strike “section 3709 of the Revised Statutes, as amend-  
28 ed (41 U.S.C. 5),” and substitute “section 6101(b) to (d) of  
29 title 41”; and

30 (ii) strike “section 302(e) of the Federal Property and Ad-  
31 ministrative Services Act of 1949 (41 U.S.C. 252(e))” and  
32 substitute “section 3106 of title 41”.

33 (3) In section 210(e), strike “the Act of February 26, 1931; 46 Stat.  
34 1421” and substitute “sections 3114 to 3116 and 3118 of title 40”.

35 (4) In section 502(b)(5), strike “Section 3709 of the Revised Stat-  
36 utes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

37 (f) THE INTERNAL REVENUE CODE OF 1986.—Section 7608(e)(1) of the  
38 Internal Revenue Code of 1986 (26 U.S.C. 7608(e)(1)) is amended—

39 (1) in subparagraph (A)(i)(II), by striking “sections 11(a) and 22”  
40 and substituting “sections 6301(a) and (b)(1)–(3) and 6306”;

1           (2) in subparagraph (A)(i)(III), by striking “section 255” and sub-  
2           stituting “chapter 45”; and

3           (3) in subparagraph (A)(i)(V), by striking “section 254(a) and (c)”  
4           and substituting “section 3901”.

5           (g) TITLE 28.—Title 28, United States Code, is amended as follows:

6           (1) In the last sentence of section 524(c)(1), strike “section 3709  
7           of the Revised Statutes of the United States (41 U.S.C. 5), title III  
8           of the Federal Property and Administrative Services Act of 1949 (41  
9           U.S.C. 251 and following)” and substitute “part C of subtitle I of title  
10          41, section 6101(b) to (d) of title 41”.

11          (2) In section 604(a)(10)(C), strike “section 3709 of the Revised  
12          Statutes of the United States (41 U.S.C. 5)” and substitute “section  
13          6101(b) to (d) of title 41”.

14          (3) In section 624(3), strike “section 3709 of the Revised Statutes,  
15          as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of  
16          title 41”.

17          (4) In section 753(g), strike “section 3709 of the Revised Statutes  
18          of the United States, as amended (41 U.S.C. 5)” and substitute “sec-  
19          tion 6101(b) to (d) of title 41”.

20          (5) In section 1295—

21                 (A) in subsection (a)(10), strike “section 8(g)(1) of the Con-  
22                 tract Disputes Act of 1978 (41 U.S.C. 607(g)(1))” and substitute  
23                 “section 6907(a)(1) of title 41”;

24                 (B) in subsection (b), strike “section 10(b) of the Contract Dis-  
25                 putes Act of 1978 (41 U.S.C. 609(b))” and substitute “section  
26                 6907(b) of title 41”; and

27                 (C) in subsection (c), strike “section 10(b) of the Contract Dis-  
28                 putes Act of 1978” and substitute “section 6907(b) of title 41”.

29          (6) In section 1346(a)(2), strike “sections 8(g)(1) and 10(a)(1) of  
30          the Contract Disputes Act of 1978” and substitute “sections  
31          6904(b)(1) and 6907(a)(1) of title 41”.

32          (7) In the chapter analysis for chapter 91, in item 1499, strike  
33          “Contract Work Hours and Safety Standards Act” and substitute  
34          “chapter 37 of title 40”.

35          (8) In section 1491(a)(2), strike “section 10(a)(1) of the Contract  
36          Disputes Act of 1978” and substitute “section 6904(b)(1) of title 41”.

37          (9) In section 1499, in the section catchline, strike “**Contract**  
38          **Work Hours and Safety Standards Act**” and substitute  
39          “**chapter 37 of title 40**”.

40          (10) In section 2401(a), strike “the Contract Disputes Act of 1978”  
41          and substitute “chapter 69 of title 41”.

1 (11) In section 2412—

2 (A) in subsection (d)(2)(E), strike “the Contract Disputes Act  
3 of 1978” and substitute “chapter 69 of title 41”; and

4 (B) in subsection (d)(3), strike “the Contract Disputes Act of  
5 1978” and substitute “chapter 69 of title 41”.

6 (12) In section 2414, strike “the Contract Disputes Act of 1978”  
7 and substitute “chapter 69 of title 41”.

8 (13) In section 2517(a), strike “the Contract Disputes Act of 1978”  
9 and substitute “chapter 69 of title 41”.

10 (h) TITLE 31.—Title 31, United States Code, is amended as follows:

11 (1) In section 506, strike “section 5(a) of the Office of Federal Pro-  
12 curement Policy Act (41 U.S.C. 404(a))” and substitute “section  
13 1101(a) of title 41”.

14 (2) In section 731(i)(7), strike “section 27 of the Office of Federal  
15 Procurement Policy Act (41 U.S.C. 423)” and substitute “chapter 21  
16 of title 41”.

17 (3) In section 781(e)(1), strike “section 3709 of the Revised Stat-  
18 utes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

19 (4) Section 1344(g)(2)(A) is amended to read as follows:

20 “(A) a department—

21 “(i) including independent establishments, other agencies,  
22 and wholly owned Government corporations; but

23 “(ii) not including the Senate, House of Representatives, or  
24 Architect of the Capitol, or the officers or employees there-  
25 of;”.

26 (5) In section 3567, strike “section 4(1) of the Office of Federal  
27 Procurement Policy Act (41 U.S.C. 403(1))” and substitute “section  
28 133 of title 41”.

29 (6) In section 3718(b)(1)(A), strike “title III of the Federal Prop-  
30 erty and Administrative Services Act of 1949 (41 U.S.C. 251 and fol-  
31 lowing)” and substitute “part C of subtitle I of title 41”.

32 (7) In section 3902(a), strike “section 12 of the Contract Disputes  
33 Act of 1978 (41 U.S.C. 611)” and substitute “section 6909(a)(1) and  
34 (b) of title 41”.

35 (8) In section 3907—

36 (A) in subsection (a), strike “section 6 of the Contract Disputes  
37 Act of 1978 (41 U.S.C. 605)” and substitute “section 6903 of  
38 title 41”;

39 (B) in subsection (b)(1)(A), strike “the Contract Disputes Act  
40 of 1978 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of  
41 title 41”;

- 1 (C) in subsection (b)(2)—
- 2 (i) strike “section 12 of the Contract Disputes Act of 1978
- 3 (41 U.S.C. 611)” and substitute “section 6909(a)(1) and (b)
- 4 of title 41”; and
- 5 (ii) in the second sentence, strike “section 12” and sub-
- 6 stitute “section 6909(a)(1) and (b)”; and
- 7 (D) in subsection (c), strike “the Contract Disputes Act of 1978
- 8 (41 U.S.C. 601 et seq.)” and substitute “chapter 69 of title 41”.
- 9 (9) In section 6202(c)(2), strike “section 6(d)(5) of the Office of
- 10 Federal Procurement Policy Act (41 U.S.C. 405(d)(5))” and substitute
- 11 “section 1122(a)(5) of title 41”.
- 12 (10) In section 9703(b)(3), as added by section 638(b)(1) of the Act
- 13 of October 6, 1992 (Public Law 102–393, 106 Stat. 1779), strike “sec-
- 14 tion 3709 of the Revised Statutes of the United States (41 U.S.C. 5),
- 15 title III of the Federal Property and Administrative Services Act of
- 16 1949 (41 U.S.C. 251 et seq.)” and substitute “part C of subtitle I of
- 17 title 41, section 6101(b) to (d) of title 41”.
- 18 (i) TITLE 35.—Title 35, United States Code, is amended as follows:
- 19 (1) In section 2(b)(4)(A), strike “title III of the Federal Property
- 20 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and
- 21 substitute “part C of subtitle I of title 41”.
- 22 (2) In section 203(b), strike “the Contract Disputes Act (41 U.S.C.
- 23 § 601 et seq.)” and substitute “chapter 69 of title 41”.
- 24 (j) TITLE 38.—Title 38, United States Code, is amended as follows:
- 25 (1) In section 1720(e)(2), strike “section 2(b)(1) of the Service Con-
- 26 tract Act of 1965 (41 U.S.C. 351(b)(1))” and substitute “section
- 27 6704(a) of title 41”.
- 28 (2) In section 1966(a), strike “section 3709 of the Revised Statutes,
- 29 as amended (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of
- 30 title 41”.
- 31 (3) In section 3720(b), strike “title III of the Federal Property and
- 32 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-
- 33 stitute “part C of subtitle I of title 41”.
- 34 (4) In section 7317(f), strike “section 3709 of the Revised Statutes
- 35 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- 36 (5) In section 7802(f), strike “section 3709 of the Revised Statutes
- 37 (41 U.S.C. 5)” 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
- 40 Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of
- 41 title 41”; and

- 1 (B) in subsection (c)—
- 2 (i) strike “(41 U.S.C. 252(e));” and
- 3 (ii) strike “section 304 of that Act (41 U.S.C. 254)” and
- 4 substitute “sections 3901 and 3905 of title 41”.
- 5 (7) In section 8153(a)—
- 6 (A) in paragraph (3)(B)(ii), strike “section 22 of the Office of
- 7 Federal Procurement Policy Act (41 U.S.C. 418b)” and substitute
- 8 “section 1706 of title 41”; and
- 9 (B) in paragraph (3)(D), strike “section 303(f) of the Federal
- 10 Property and Administrative Services Act of 1949 (41 U.S.C.
- 11 253(f))” and substitute “section 3303(d) of title 41”.
- 12 (8) In section 8201(e), strike “section 3709 of the Revised Statutes
- 13 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.
- 14 (k) TITLE 39.—Section 410(b) of title 39, United States Code, is amend-
- 15 ed by striking paragraph (5) and substituting—
- 16 “(5) chapters 65 and 67 of title 41;”.
- 17 (l) TITLE 40.—Title 40, United States Code, is amended as follows:
- 18 (1) In the chapter analysis for chapter 1, in item 111, strike “Fed-
- 19 eral Property and Administrative Services Act of 1949” and substitute
- 20 “part C of subtitle I of title 41”.
- 21 (2) In section 102, before paragraph (1), strike “title III of the Fed-
- 22 eral Property and Administrative Services Act of 1949 (41 U.S.C. 251
- 23 et seq.)” and substitute “part C of subtitle I of title 41”.
- 24 (3) In section 111—
- 25 (A) in the section catchline, strike “**Federal Property and**
- 26 **Administrative Services Act of 1949**” and substitute
- 27 “**part C of subtitle I of title 41**”; and
- 28 (B) before paragraph (1), strike “title III of the Federal Prop-
- 29 erty and Administrative Services Act of 1949 (41 U.S.C. 251 et
- 30 seq.)” and substitute “part C of subtitle I of title 41”.
- 31 (4) In section 113(b)—
- 32 (A) in the heading, strike “THE OFFICE OF FEDERAL PRO-
- 33 CUREMENT POLICY ACT” and substitute “PART B OF SUBTITLE
- 34 I OF TITLE 41”; and
- 35 (B) strike “the Office of Federal Procurement Policy Act (41
- 36 U.S.C. 401 et seq.)” and substitute “part B of subtitle I of title
- 37 41”.
- 38 (5) In section 311—
- 39 (A) in subsection (a), strike “title III of the Federal Property
- 40 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”
- 41 and substitute “part C of subtitle I of title 41”; and

1 (B) in subsection (b), strike “title III of the Federal Property  
2 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
3 and substitute “part C of subtitle I of title 41”.

4 (6) In section 501(b)(2)(B), strike “the Office of Federal Procure-  
5 ment Policy Act (41 U.S.C. 401 et seq.)” and substitute “part B of  
6 subtitle I of title 41”.

7 (7) In section 502—

8 (A) in subsection (b)(1)(A)(i), strike “section 5(3) of the Javits-  
9 Wagner-O’Day Act (41 U.S.C. 48b(3))” and substitute “section  
10 8501(8) of title 41”;

11 (B) in subsection (b)(1)(A)(ii), strike “handicapped (as defined  
12 in section 5(4) of the Javits-Wagner-O’Day Act (41 U.S.C.  
13 48b(4)))” and substitute “disabled (as defined in section 8501(7)  
14 of title 41)”;

15 (C) in subsection (b)(1)(B), strike “the Javits-Wagner-O’Day  
16 Act (41 U.S.C. 46 et seq.)” and substitute “chapter 85 of title  
17 41”; and

18 (D) in subsection (b)(2), strike “section 2 of the Javits-Wagner-  
19 O’Day Act (41 U.S.C. 47)” and substitute “section 8503 of title  
20 41”.

21 (8) In section 503(b)—

22 (A) in paragraph (1), strike “the Office of Federal Procurement  
23 Policy Act (41 U.S.C. 401 et seq.)” and substitute “part B of sub-  
24 title I of title 41”; and

25 (B) in paragraph (3)—

26 (i) in the heading, strike “SECTION 3709 OF REVISED STAT-  
27 UTES” and substitute “SECTION 6101(b) TO (d) OF TITLE 41”;  
28 and

29 (ii) strike “Section 3709 of the Revised Statutes (41  
30 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title  
31 41”.

32 (9) In section 506(a)(1)(D), strike “the Office of Federal Procure-  
33 ment Policy Act (41 U.S.C. 401 et seq.)” and substitute “part B of  
34 subtitle I of title 41”.

35 (10) In section 545(f), strike “Section 3709 of the Revised Statutes  
36 (41 U.S.C. 5)” and substitute “Section 6101(b)–(d) of title 41”.

37 (11) In section 593(a)(2), strike “the Javits-Wagner-O’Day Act (41  
38 U.S.C. 46 et seq.)” and substitute “chapter 85 of title 41”.

39 (12) In section 1305, strike “title III of the Federal Property and  
40 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
41 stitute “part C of subtitle I of title 41”.

1 (13) In section 1308, strike “title III of the Federal Property and  
2 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
3 stitute “part C of subtitle I of title 41”.

4 (14) In section 3148, strike “section 3709 of the Revised Statutes  
5 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

6 (15) In section 3304(d)(2), strike “title III of the Federal Property  
7 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and  
8 substitute “part C of subtitle I of title 41”.

9 (16) In section 3305(a)—

10 (A) in paragraph (1), strike “title III of the Federal Property  
11 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
12 and substitute “part C of subtitle I of title 41”; and

13 (B) in paragraph (2), strike “title III of the Federal Property  
14 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
15 and substitute “part C of subtitle I of title 41”.

16 (17) In section 3308(a), strike “section 3709 of the Revised Statutes  
17 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

18 (18) In section 3310(2), strike “section 303 of the Federal Property  
19 and Administrative Services Act of 1949 (41 U.S.C. 253)” and sub-  
20 stitute “sections 3105 and 3301 to 3304 of title 41”.

21 (19) In section 3701(b)(3)(A)(ii), strike “the Walsh-Healey Act (41  
22 U.S.C. 35 et seq.)” and substitute “chapter 65 of title 41”.

23 (20) In section 3704(b)(1), strike “sections 4 and 5 of the Walsh-  
24 Healey Act (41 U.S.C. 38, 39)” and substitute “sections 6506 and  
25 6507 of title 41”.

26 (21) In section 3707, strike “section 4 of the Office of Federal Pro-  
27 curement Policy Act (41 U.S.C. 403)” and substitute “section 103 of  
28 title 41”.

29 (22) In section 6111(b)(2)(D), strike “section 3709 of the Revised  
30 Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title  
31 41”.

32 (23) In section 8711(d), strike “section 3709 of the Revised Statutes  
33 (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title 41”.

34 (24) In section 11101—

35 (A) in paragraph (1), strike “section 4 of the Office of Federal  
36 Procurement Policy Act (41 U.S.C. 403)” and substitute “section  
37 103 of title 41”; and

38 (B) in paragraph (2), strike “section 4 of the Act (41 U.S.C.  
39 403)” and substitute “section 133 of title 41”.

40 (m) TITLE 44.—Title 44, United States Code, is amended as follows:

1 (1) In the chapter analysis for chapter 3, in the item for section 311,  
 2 strike “the Federal Property and Administrative Services Act” and  
 3 substitute “subtitle I of title 40 and part C of subtitle I of title 41”.

4 (2) In section 311—

5 (A) in the section catchline, strike “**the Federal Property**  
 6 **and Administrative Services Act**” and substitute “**sub-**  
 7 **title I of title 40 and part C of subtitle I of title 41**”;

8 (B) in subsection (a), strike “title III of the Federal Property  
 9 and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”  
 10 and substitute “part C of subtitle I of title 41”; and

11 (C) in subsection (c), strike “section 3709 of the Revised Stat-  
 12 utes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title  
 13 41”.

14 (n) TITLE 49.—Title 49, United States Code, is amended as follows:

15 (1) In section 103(e), strike “title III of the Federal Property and  
 16 Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” and sub-  
 17 stitute “part C of subtitle I of title 41”.

18 (2) In section 1113(b)(1)(B) strike “section 3709 of the Revised  
 19 Statutes (41 U.S.C. 5)” and substitute “section 6101(b) to (d) of title  
 20 41”.

21 (3) In section 5334(j)(2), strike “Section 3709 of the Revised Stat-  
 22 utes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

23 (4) In section 10721, strike “Section 3709 of the Revised Statutes  
 24 (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

25 (5) In section 13712, strike “Section 3709 of the Revised Statutes  
 26 (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

27 (6) In section 15504, strike “Section 3709 of the Revised Statutes  
 28 (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

29 (7) In section 40110—

30 (A) in subsection (d)(2)(A), strike “Title III of the Federal  
 31 Property and Administrative Services Act of 1949 (41 U.S.C.  
 32 252–266)” and substitute “Part C of subtitle I of title 41”;

33 (B) in subsection (d)(2)(B), strike “The Office of Federal Pro-  
 34 curement Policy Act (41 U.S.C. 401 et seq.)” and substitute  
 35 “Part B of subtitle I of title 41”;

36 (C) in subsection (d)(2)(C), strike “, except for section 315 (41  
 37 U.S.C. 265). For the purpose of applying section 315 of that Act  
 38 to the system,” and substitute “. However, section 4705 of title  
 39 41 shall apply to the new acquisition management system devel-  
 40 oped and implemented pursuant to paragraph (1). For the purpose  
 41 of applying section 4705 of title 41 to the system,”; and

(D) in subsection (d)(3)—

(i) in the heading, strike “THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT” and substitute “PART B OF SUBTITLE I OF TITLE 41”;

(ii) before subparagraph (A), strike “section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423)” and substitute “chapter 21 of title 41”; and

(iii) in subparagraph (A), strike “Subsections (f) and (g)” and substitute “Sections 2101 and 2106 of title 41”.

(8) In section 40118(f)(2), strike “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))” and substitute “section 103 of title 41”.

(9) In section 47305(d), strike “Section 3709 of the Revised Statutes (41 U.S.C. 5)” and substitute “Section 6101(b) to (d) of title 41”.

**SEC. 6. TECHNICAL AMENDMENTS.**

(a) SECTIONS 6901, 6905, 6907, AND 6908.—Effective January 6, 2007, or the date of enactment of this Act, whichever is later, title 41, United States Code, is amended as follows:

(1) Section 6901 is amended to read as follows:

**“§ 6901. Definitions**

“In this chapter:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

“(2) AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.—The term ‘agency board’ or ‘agency board of contract appeals’ means—

“(A) the Armed Services Board;

“(B) the Civilian Board;

“(C) the board of contract appeals of the Tennessee Valley Authority; or

“(D) the Postal Service Contract Board of Appeals established under section 6905(d)(1) of this title.

“(3) AGENCY HEAD.—The term ‘agency head’ means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

“(4) ARMED SERVICES BOARD.—The term ‘Armed Services Board’ means the Armed Services Board of Contract Appeals established under section 6905(a)(1) of this title;

1           “(5) CIVILIAN BOARD.—The term ‘Civilian Board’ means the Civilian Board of Contract Appeals established under section 6905(b)(1) of this title.

2           “(6) CONTRACTING OFFICER.—The term ‘contracting officer’—

3                   “(A) means an individual who, by appointment in accordance with applicable regulations, has the authority to make and administer contracts and to make determinations and findings with respect to contracts; and

4                   “(B) includes an authorized representative of the contracting officer, acting within the limits of the representative’s authority.

5           “(7) CONTRACTOR.—The term ‘contractor’ means a party to a Federal Government contract other than the Federal Government.

6           “(8) EXECUTIVE AGENCY.—The term ‘executive agency’ means—

7                   “(A) an executive department as defined in section 101 of title 5;

8                   “(B) a military department as defined in section 102 of title 5;

9                   “(C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; and

10                  “(D) a wholly owned Government corporation as defined in section 9101(3) of title 31.

11           “(9) MISREPRESENTATION OF FACT.—The term ‘misrepresentation of fact’ means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.”.

12           (2) Section 6905 is amended to read as follows:

13           **§ “6905. Agency boards**

14           “(a) ARMED SERVICES BOARD.—

15                   “(1) ESTABLISHMENT.—An Armed Services Board of Contract Appeals may be established within the Department of Defense when the Secretary of Defense, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least 3 members who shall have no other inconsistent duties. Workload studies will be updated at least once every 3 years and submitted to the Administrator.

16                   “(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Armed Services Board shall be selected and appointed in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years of experience in public contract law. The Sec-

1           retary of Defense shall designate the chairman and vice chairman of  
2           the Armed Services Board from among the appointed members. Com-  
3           pensation for the chairman, vice chairman, and other members shall be  
4           determined under section 5372a of title 5.

5           “(b) CIVILIAN BOARD.—

6                 “(1) ESTABLISHMENT.—There is established in the General Services  
7           Administration the Civilian Board of Contract Appeals.

8                 “(2) MEMBERSHIP.—

9                     “(A) ELIGIBILITY.—The Civilian Board consists of members ap-  
10           pointed by the Administrator of General Services (in consultation  
11           with the Administrator) from a register of applicants maintained  
12           by the Administrator of General Services, in accordance with rules  
13           issued by the Administrator of General Services (in consultation  
14           with the Administrator) for establishing and maintaining a reg-  
15           ister of eligible applicants and selecting Civilian Board members.  
16           The Administrator of General Services shall appoint a member  
17           without regard to political affiliation and solely on the basis of the  
18           professional qualifications required to perform the duties and re-  
19           sponsibilities of a Civilian Board member.

20                     “(B) APPOINTMENT OF MEMBERS AND COMPENSATION.—Mem-  
21           bers of the Civilian Board shall be selected and appointed to serve  
22           in the same manner as administrative law judges appointed pursu-  
23           ant to section 3105 of title 5, with an additional requirement that  
24           members must have had at least 5 years experience in public con-  
25           tract law. Compensation for the members shall be determined  
26           under section 5372a of title 5.

27                     “(C) INDIVIDUALS WHO SHALL SERVE AS BOARD MEMBERS.—

28           Notwithstanding subparagraph (B), any full-time member of an  
29           agency board of contract appeals, other than the Armed Services  
30           Board, the Postal Service Board of Contract Appeals, and the  
31           board of contract appeals of the Tennessee Valley Authority, serv-  
32           ing in that capacity on January 5, 2007, shall serve as Civilian  
33           Board members.

34                 “(3) REMOVAL.—Members of the Civilian Board are subject to re-  
35           moval in the same manner as administrative law judges, as provided  
36           in section 7521 of title 5.

37                 “(4) FUNCTIONS.—

38                     “(A) IN GENERAL.—The Civilian Board has jurisdiction as pro-  
39           vided by subsection (e)(1)(B).

40                     “(B) ADDITIONAL JURISDICTION.—With the concurrence of the  
41           Federal agencies affected, the Civilian Board may assume—

1           “(i) jurisdiction over any additional category of laws or dis-  
2           putes over which an agency board of contract appeals estab-  
3           lished pursuant to this section or section 8 of the Contract  
4           Disputes Act exercised jurisdiction before January 6, 2007;  
5           and

6           “(ii) any other function the agency board performed before  
7           January 6, 2007, on behalf of such agencies.

8           “(c) TENNESSEE VALLEY AUTHORITY BOARD.—

9           “(1) ESTABLISHMENT.—The Board of Directors of the Tennessee  
10          Valley Authority may establish a board of contract appeals of the Ten-  
11          nessee Valley Authority of an indeterminate number of members.

12          “(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—The Board  
13          of Directors of the Tennessee Valley Authority shall establish criteria  
14          for the appointment of members to the agency board established under  
15          paragraph (1), and shall designate a chairman of the agency board.  
16          The chairman and other members of the agency board shall receive  
17          compensation, at the daily equivalent of the rates determined under  
18          section 5372a of title 5, for each day they are engaged in the actual  
19          performance of their duties as members of the agency board.

20          “(d) POSTAL SERVICE BOARD.—

21          “(1) ESTABLISHMENT.—There is established an agency board of  
22          contract appeals known as the Postal Service Board of Contract Ap-  
23          peals.

24          “(2) APPOINTMENT AND SERVICE OF MEMBERS.—The Postal Service  
25          Board of Contract Appeals consists of judges appointed by the Post-  
26          master General. The judges shall meet the qualifications of and serve  
27          in the same manner as members of the Civilian Board.

28          “(3) APPLICATION.—This chapter applies to contract disputes before  
29          the Postal Service Board of Contract Appeals in the same manner as  
30          it applies to contract disputes before the Civilian Board.

31          “(e) JURISDICTION.—

32          “(1) IN GENERAL.—

33                  “(A) ARMED SERVICES BOARD.—The Armed Services Board has  
34                  jurisdiction to decide any appeal from a decision of a contracting  
35                  officer of the Department of Defense, the Department of the  
36                  Army, the Department of the Navy, the Department of the Air  
37                  Force, or the National Aeronautics and Space Administration re-  
38                  lative to a contract made by that department or agency.

39                  “(B) CIVILIAN BOARD.—The Civilian Board has jurisdiction to  
40                  decide any appeal from a decision of a contracting officer of any  
41                  executive agency (other than the Department of Defense, the De-

1            department of the Army, the Department of the Navy, the Depart-  
2            ment of the Air Force, the National Aeronautics and Space Ad-  
3            ministration, the United States Postal Service, the Postal Rate  
4            Commission, or the Tennessee Valley Authority) relative to a con-  
5            tract made by that agency.

6            “(C) POSTAL SERVICE BOARD.—The Postal Service Board of  
7            Contract Appeals has jurisdiction to decide any appeal from a de-  
8            cision of a contracting officer of the United States Postal Service  
9            or the Postal Rate Commission relative to a contract made by ei-  
10          ther agency.

11          “(D) OTHER AGENCY BOARDS.—Each other agency board has  
12          jurisdiction to decide any appeal from a decision of a contracting  
13          officer relative to a contract made by its agency.

14          “(2) RELIEF.—In exercising this jurisdiction, an agency board may  
15          grant any relief that would be available to a litigant asserting a con-  
16          tract claim in the United States Court of Federal Claims.

17          “(f) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency  
18          board of contract appeals may administer oaths to witnesses, authorize  
19          depositions and discovery proceedings, and require by subpoena the attend-  
20          ance of witnesses, and production of books and papers, for the taking of  
21          testimony or evidence by deposition or in the hearing of an appeal by the  
22          agency board. In case of contumacy or refusal to obey a subpoena by a per-  
23          son who resides, is found, or transacts business within the jurisdiction of  
24          a United States district court, the court, upon application of the agency  
25          board through the Attorney General, or upon application by the board of  
26          contract appeals of the Tennessee Valley Authority, shall have jurisdiction  
27          to issue the person an order requiring the person to appear before the agen-  
28          cy board or a member of the agency board, to produce evidence or to give  
29          testimony, or both. Any failure of the person to obey the order of the court  
30          may be punished by the court as contempt of court.

31          “(g) DECISIONS.—An agency board shall—

32                “(1) to the fullest extent practicable provide informal, expeditious,  
33                and inexpensive resolution of disputes;

34                “(2) issue a decision in writing or take other appropriate action on  
35                each appeal submitted; and

36                “(3) mail or otherwise furnish a copy of the decision to the con-  
37                tractor and the contracting officer.”.

38                (3) In section 6907(a)(2) before subparagraph (A), strike “agency  
39                board” and substitute “board of contract appeals”.

40                (4) In section 6908(d)(2), strike “agency board” and substitute  
41                “board of contract appeals”.

1 (b) CONTINGENT AMENDMENTS.—

2 (1) IF ENACTED BEFORE JANUARY 6, 2007.—If this Act is enacted  
3 before January 6, 2007, section 847 of National Defense Authorization  
4 Act for Fiscal Year 2006 (Public Law 109–163, 119 Stat. 3391) is  
5 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 Procure-  
10 ment Policy Act” and inserting “section 6905(b)(2) of title  
11 41”.

12 (2) IF ENACTED ON OR AFTER JANUARY 6, 2007.—If this Act is en-  
13 acted 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 Procure-  
16 ment Policy Act” and inserting “section 6905(b)(2) of title 41”;  
17 and

18 (B) section 42 of the Office of Federal Procurement Policy Act  
19 (41 U.S.C. 438) is repealed.

20 **SEC. 7. TRANSITIONAL AND SAVINGS PROVISIONS.**

21 (a) CUTOFF DATE.—This Act replaces certain provisions of law enacted  
22 on or before March 31, 2006. If a law enacted after that date amends or  
23 repeals a provision replaced by this Act, that law is deemed to amend or  
24 repeal, as the case may be, the corresponding provision enacted by this Act.  
25 If a law enacted after that date is otherwise inconsistent with this Act, it  
26 supersedes this Act to the extent of the inconsistency.

27 (b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of de-  
28 termining whether one provision of law supersedes another based on enact-  
29 ment later in time, the date of enactment of a provision enacted by this Act  
30 is deemed to be the date of enactment of the provision it replaced.

31 (c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision  
32 of law replaced by this Act, including a reference in a regulation, order, or  
33 other law, is deemed to refer to the corresponding provision enacted by this  
34 Act.

35 (d) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A  
36 regulation, order, or other administrative action in effect under a provision  
37 of law replaced by this Act continues in effect under the corresponding pro-  
38 vision enacted by this Act.

39 (e) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or  
40 an offense committed under a provision of law replaced by this Act is

1 deemed to have been taken or committed under the corresponding provision  
2 enacted by this Act.

3 **SEC. 8. REPEALS.**

4 (a) INFERENCE OF REPEAL.—The repeal of a law by this Act may not  
5 be construed as a legislative inference that the provision was or was not in  
6 effect before its repeal.

7 (b) REPEALER SCHEDULE.—The laws specified in the following schedule  
8 are repealed, except for rights and duties that matured, penalties that were  
9 incurred, and proceedings that were begun before the date of enactment of  
10 this Act.

Schedule of Laws Repealed  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
1875 Mar. 3	133	2	18	455	10	
1884 July 7	332	(words after "fifty five thousand dollars" in 3d par. under heading "Miscellaneous Objects Under the Treasury Department").	23	204	24	6308
1920 June 5	240	(last par. under heading "Purchase of Articles Manufactured at Government Arsenals").	41	975	23	6307
1921 June 30	33	1 (last proviso on p. 78)	42	78	11a	6302
1922 July 1	259	(1st proviso on p. 812)	42	812	23	6307
1926 May 13	294	(4th complete par. (related to R.S. § 3741) on p. 547)	44	547	16c	
1927 Jan. 12	27	(2d complete par. (related to R.S. § 3741) on p. 936)	44	936	16a	
1933 Mar. 3	212	title III, § 1	47	1520	10c	8301
		title III, § 2	47	1520	10a	8302
		title III, § 3	47	1520	10b	8303
		title III, § 4			10b-1	
June 16	101	5	48	305	24a	
1934 Jan. 25	5	(related to R.S. § 3741)	48	337	22	6306
June 16	553	1-6	48	974	28-33	

1935	815	.....	49	990	.....	34	.....
Aug. 29	.....	.....	.....	.....	.....	.....	.....
1936	881	.....	49	2036	.....	35	6502
June 30	.....	1 (matter before subsec. (a) less words related to definition of "agency of the United States")	49	2036	.....	35	6501
.....	.....	1 (matter before subsec. (a) related to definition of "agency of the United States")	49	2036	.....	35	6502
.....	.....	1(a)-(d)	49	2037	.....	36	6503
.....	.....	2	49	2037	.....	37	6504
.....	.....	3	49	2038	.....	38	6506
.....	.....	4	49	2038	.....	39	6507
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