

26 for such period. Such interest shall accrue from the time payments of the increased costs were made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment.

(i) Reports to Congress

The Board shall report to the Congress not later than one year after November 17, 1988, and annually thereafter, with respect to the activities and operations of the Board under this section, together with such recommendations as it considers appropriate.

(j) Effect on other standards and regulations

(1) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations promulgated by the Cost Accounting Standards Board under section 2168¹ of title 50, Appendix, shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to this section.

(2) Existing cost accounting standards referred to in paragraph (1) shall be subject to the provisions of this chapter in the same manner as if promulgated by the Board under this chapter.

(3) The Administrator, under the authority set forth in section 405 of this title, shall ensure that no regulation or proposed regulation of an executive agency is inconsistent with a cost accounting standard promulgated or amended under this section by rescinding or denying the promulgation of any such inconsistent regulation or proposed regulation and taking such other action authorized under section 405 of this title as may be appropriate.

(4) Costs which are the subject of cost accounting standards promulgated under this section shall not be subject to regulations that are established by another executive agency that differ from such standards with respect to the measurement, assignment, and allocation of such costs.

(k) Examinations

For the purpose of determining whether a contractor or subcontractor has complied with cost accounting standards promulgated under this section and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, any authorized representative of the head of the agency concerned, of the offices of inspector general established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States shall have the right to examine and make copies of any documents, papers, or records of such contractor or subcontractor relating to compliance with such cost accounting standards.

(l) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 93-400, §26, as added Pub. L. 100-679, §5(a), Nov. 17, 1988, 102 Stat. 4058; amended Pub. L. 103-355, title II, §2453, title VIII, §8301(d), Oct. 13, 1994, 108 Stat. 3326, 3397.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are

¹ See References in Text note below.

classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Level IV of the Executive Schedule, referred to in subsec. (e), is set out in section 5315 of Title 5.

The Contract Disputes Act, referred to in subsec. (h)(2), probably means the Contract Disputes Act of 1978, Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 601 of this title and Tables.

Section 2168 of title 50, Appendix, referred to in subsec. (j)(1), was repealed by Pub. L. 100-679, §5(b), Nov. 17, 1988, 102 Stat. 4063.

The Inspector General Act of 1978, referred to in subsec. (k), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (f)(2). Pub. L. 103-355, §8301(d), designated existing provisions as subpar. (A), substituted a period for “, other than contracts or subcontracts where the price negotiated is based on (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation”, and added subpars. (B) and (C).

Subsec. (f)(3). Pub. L. 103-355, §2453, substituted “The Administrator” for “Not later than 180 days after November 17, 1988, the Administrator”.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 423. Procurement integrity

(a) Prohibited conduct by competing contractors

During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency, except as provided in subsection (c) of this section;

(2) offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) Prohibited conduct by procurement officials

During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

(1) solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor, except as provided in subsection (c) of this section;

(2) ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement; or

(3) disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) Recusal

(1) A procurement official may engage in a discussion with a competing contractor that is otherwise prohibited by subsection (b)(1) of this section if, before engaging in such discussion—

(A) the procurement official proposes in writing to disqualify himself from the conduct of any procurement relating to the competing contractor (i) for any period during which future employment or business opportunities for such procurement official with such competing contractor have not been rejected by either the procurement official or the competing contractor, and (ii) if determined to be necessary by the head of such procuring official's procuring activity (or his designee) in accordance with criteria prescribed in implementing regulations, for a reasonable period thereafter; and

(B) the head of that procuring activity of such procurement official (or his designee), after consultation with the appropriate designated agency ethics official, approves in writing the recusal of the procurement official.

(2) A procurement official who, during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract, has participated personally and substantially in the evaluation of bids or proposals, selection of sources, or conduct of negotiations in connection with such solicitation and contract may not be approved for a recusal under paragraph (1) during such period with respect to such procurement.

(3) A procurement official who, during the period beginning with the negotiation of a modification or extension of a contract and ending with—

(A) an agreement to modify or extend the contract, or

(B) a decision not to modify or extend the contract,

has participated personally and substantially in the evaluation of a proposed modification or extension or the conduct of negotiations may not be approved for a recusal under paragraph (1) during such period with respect to such procurement.

(4) A competing contractor may engage in a discussion with a procurement official that is otherwise prohibited by subsection (a)(1) of this section if, before engaging in such discussion, the procurement official has been recused in accordance with this subsection.

(5) Regulations implementing this subsection shall include specific criteria to be used in making determinations and approving recusals under paragraph (1).

(d) Disclosure to unauthorized persons

During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(e) Certification and enforcement matters

(1) A Federal agency may not award a contract for the procurement of property or services to any competing contractor, or agree to any modification or extension of a contract, unless the officer or employee of such contractor responsible for the offer or bid for such contract, or the modification or extension of such contract, as the case may be—

(A)(i) certifies in writing to the contracting officer responsible for such contract that such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsection (a), (b), (d), or (f) of this section, or applicable implementing regulations, pertaining to such procurement; or

(ii) discloses to such contracting officer any and all such information and certifies in writing to such contracting officer that any and all such information has been disclosed; and

(B) certifies in writing to such contracting officer, except in the case of a contract for the procurement of commercial items, that each officer, employee, agent, representative, and consultant of such competing contractor who has participated personally and substantially in the preparation or submission of such bid or offer, or in such modification or extension of such contract, as the case may be, has certified to such competing contractor that he or she—

(i) is familiar with, and will comply with, the requirements of subsection (a) of this section and applicable implementing regulations; and

(ii) will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification or extension of such contract, as the case may be, any information concerning a violation or possible violation of subsection (a), (b), (d), or (f) of this section, or such applicable implementing regulations, pertaining to such procurement.

(2) A Federal agency may not award a contract for the procurement of property or services, or agree to any modification or extension of any

such contract, unless the contracting officer responsible for such procurement—

(A) certifies in writing to the head of such agency that the contracting officer has no information concerning a violation or possible violation of subsection (a), (b), (d), or (f) of this section, or applicable implementing regulations, pertaining to such procurement; or

(B) discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(3) The head of a Federal agency may require any procurement official or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services—

(A) to certify in writing to the head of such agency that such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for such contract or the modification or extension of such contract, as the case may be, has no information concerning a violation or possible violation of subsection (a), (b), (d), or (f) of this section, or applicable implementing regulations, pertaining to such procurement; or

(B) to disclose to the head of such agency any and all such information and to certify in writing that any and all such information has been disclosed.

(4) If a procurement official leaves the Government during the conduct of such a procurement, such official shall certify that he or she understands the continuing obligation not to disclose proprietary or source selection information.

(5) For the purposes of enforcing the requirements of this section, the contracting officer responsible for the conduct of a procurement shall maintain, as part of the procurement file—

(A) all certifications made by procurement officials and competing contractors with regard to such procurement, as required by this subsection; and

(B) a record of all persons who have been authorized by the head of the agency or the contracting officer to have access to proprietary or source selection information regarding such procurement.

(6) Any person making a certification required by this subsection shall be notified of the applicability of section 1001 of title 18 to false, fictitious, or fraudulent statements in such certification.

(7)(A) This subsection applies only to contracts, extensions, and modifications in excess of \$100,000.

(B) This subsection need not be applied to a contract—

(i) with a foreign government or an international organization that is not required to be awarded using competitive procedures pursuant to section 253(c)(4) of this title or section 2304(c)(4) of title 10; or

(ii) in an exceptional case, when the head of the Federal agency concerned determines in writing that this subsection should be waived pursuant to procedures and criteria established in implementing regulations issued pursuant to subsection (o) of this section and no-

tifies the Congress in writing of such determination.

The authority to make determinations under clause (ii) of this subparagraph may not be delegated.

(f) Restrictions resulting from procurement activities of procurement officials

(1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly—

(A) participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

(B) participate personally and substantially on behalf of the competing contractor in the performance of such contract,

during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

(2) This subsection does not apply to any participation referred to in paragraph (1)(A) or (1)(B) with respect to a subcontractor who is a competing contractor unless—

(A) the subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of \$100,000;

(B) the subcontractor significantly assisted the prime contractor with respect to negotiation of the prime contract;

(C) the procurement official involved in the award, modification, or extension of the prime contract personally directed or recommended the particular subcontractor to the prime contractor as a source for the subcontract; or

(D) the procurement official personally reviewed and approved the award, modification, or extension of the subcontract.

(3)(A)(i) The President may grant a waiver of a restriction imposed by paragraph (1) (relating to post-Government service employment) to an officer or employee described in subparagraph (B) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Government at any one time may hold waivers under this subparagraph.

(ii) A waiver granted under this subparagraph to any person shall apply only with respect to activities engaged in by that person after that person's Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Government employment began.

(B) Waivers under subparagraph (A) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(C) A certification under subparagraph (A) shall take effect upon its publication in the Federal Register and shall identify—

- (i) the officer or employee covered by the waiver by name and by position, and
- (ii) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(D) The President may not delegate the authority provided by this paragraph.

(E)(i) Each person granted a waiver under this paragraph shall prepare reports, in accordance with clause (ii), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in clause (ii), and if so, what those activities were.

(ii) A report under clause (i) shall cover each six-month period beginning on the date of the termination of the person's Government employment (with respect to which the waiver under this paragraph was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this subparagraph shall be made available for public inspection and copying.

(iii) If a person fails to file any report in accordance with clauses (i) and (ii), the President shall revoke the waiver and notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(iv) Any person who is granted a waiver under this paragraph shall be ineligible for appointment in the civil service unless all reports required of such person by clauses (i) and (ii) have been filed.

(F) As used in this paragraph, the term "civil service" has the meaning given that term in section 2101 of title 5.

(g) Contractual penalties

(1) Regulations issued pursuant to subsection (o) of this section shall require that each contract awarded by a Federal agency contain a clause specified in such regulation that provides appropriate contractual penalties for conduct of any competing contractor prohibited by subsection (a) of this section and for any such conduct of any officer, employee, agent, representative, or consultant of such contractor.

(2) The following remedies are authorized to be included in, and shall be considered in the development of, such regulations:

(A) Denial of payment of all or any portion of the profit component of amounts otherwise payable to the contractor by the Federal agency under the contract and recovery of all or any portion of the profit component of amounts paid to the contractor by the Federal agency under the contract.

(B) Termination of the contract for default.

(C) Any other appropriate penalty.

(h) Administrative actions

(1) If an agency receives a disclosure of information pursuant to subsection (e) of this section

or otherwise receives or obtains information providing a reasonable basis to believe that an officer, employee, agent, representative, or consultant of a competing contractor has knowingly violated the requirements of this section—

(A) in the case of a procurement in which a contract has not been awarded, the agency shall determine whether to terminate the procurement or take other appropriate actions;

(B) in the case of a procurement with respect to which a contract has been awarded, the agency shall determine whether to void or rescind the contract, to terminate the contract for default, to impose sanctions upon the contractor, or to permit the contractor to continue to perform the contract, subject to review in accordance with, and to the extent provided in, the Contract Disputes Act of 1978 [41 U.S.C. 601 et seq.], or to take other appropriate actions; and

(C) if the agency determines that such a knowing violation has occurred, the agency, pursuant to procedures specified in the Federal Acquisition Regulation—

(i) may impose an immediate suspension, and

(ii) shall determine whether to initiate a debarment proceeding,

against the competing contractor or other person who committed such violation.

(2) Any procurement official of a Federal agency who engages in conduct prohibited by subsection (b) or (d) of this section shall be subject to removal or other appropriate adverse personnel action pursuant to the procedures specified in chapter 75 of title 5 or other applicable law or regulation.

(3) The actions taken under paragraph (1) or (2) may be suspended by the agency head upon the request of the Attorney General pending the disposition of any civil or criminal actions pursuant to subsections (i) and (j) of this section.

(i) Civil penalties

Any person who engages in conduct prohibited by subsection (a), (b), (d), or (f) of this section shall be subject to the imposition of a civil fine in a civil action brought by the United States in an appropriate district court of the United States. The amount of any such civil fine for such violation may not exceed—

(1) \$100,000 in the case of an individual; or

(2) \$1,000,000 in the case of a competing contractor (other than an individual).

(j) Criminal penalties

Whoever, during the conduct of a Federal agency procurement of property or services—

(1) being a competing contractor or an officer, employee, representative, agent, or consultant of a competing contractor, knowingly and willfully solicits or obtains, directly or indirectly, from any officer or employee of such agency any proprietary or source selection information (as such terms are defined in subsection (p) of this section and in regulations prescribed pursuant to subsection (o) of this section), or

(2) being an officer or employee of such agency, knowingly and willfully discloses or promises to disclose, directly or indirectly, to any

competing contractor or any officer, employee, representative, agent, or consultant of a competing contractor any proprietary or source selection information,

shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(k) Ethics advice

(1) Regulations implementing this section shall include procedures for a procurement official or former procurement official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether such procurement official or former procurement official is or would be precluded by this section from engaging in a specified activity.

(2) A procurement official or former procurement official of an agency who requests advice from a designated agency ethics official pursuant to paragraph (1) shall provide the agency ethics official with all information reasonably available to the procurement official or former procurement official that is relevant to a determination regarding such request.

(3) Not later than 30 days after the date on which the appropriate designated agency ethics official receives a request for advice pursuant to paragraph (1) accompanied by the information required by paragraph (2), or as soon thereafter as practicable, the official shall issue a written opinion regarding whether the requesting procurement official or former procurement official is precluded by this section from engaging in the specified activity.

(l) Training

The head of each Federal agency shall establish a procurement ethics program for its procurement officials. The program shall, at a minimum—

(1) provide for the distribution of written explanations of the provisions of subsections (b), (c), and (e) of this section to such procurement officials; and

(2) require each such procurement official, as a condition of serving as a procurement official, to certify that he or she is familiar with the provisions of subsections (b), (c), and (e) of this section, and will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsection (a), (b), (d), or (f) of this section, or applicable implementing regulations.

(m) Remedies not exclusive

Nothing in this subsection shall be construed to limit the applicability of the requirements, sanctions, contract penalties, and remedies established under any other law, but no agency shall be relieved of the obligation to carry out the requirements of this section because such agency has also applied such other requirements, sanctions, contract penalties, or remedies.

(n) No authority to withhold information

Nothing in this section shall be construed to authorize the withholding of any information from the Congress, any committee or sub-

committee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an Inspector General of a Federal agency.

(o) Implementing regulations and guidelines

(1) Government-wide regulations and guidelines appropriate to carry out this section shall be included in the Federal Acquisition Regulation.

(2) Regulations implementing this section shall—

(A) define the term “thing of value” for the purposes of this section and shall include a single uniform Government-wide exclusion at a specific minimal dollar amount; and

(B) authorize the delegation of the functions assigned to designated agency ethics officials under this section.

(3) Notwithstanding sections 405 and 421 of this title, on and after June 1, 1990, the Director of the Office of Government Ethics shall have the responsibility for issuance, modification, or termination of Government-wide regulations implementing paragraphs (1) and (2) of subsection (a) of this section, paragraphs (1) and (2) of subsection (b) of this section, subsections (c), (f), and (k) of this section, and paragraph (2) of this subsection. The Director shall exercise such responsibility in coordination with the Federal Acquisition Regulatory Council.

(p) Definitions

As used in this section:

(1) The term “during the conduct of any Federal agency procurement of property or services” means the period beginning on the earliest specific date, as determined under implementing regulations, on which an authorized official orders or requests an action described in clauses (i)–(viii) of paragraph (3)(A), and concluding with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, selection of sources, and conduct of negotiations.

(2) The term “competing contractor”, with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services, means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.

(3)(A) The term “procurement official” means, with respect to any procurement (including the modification or extension of a contract), any civilian or military official or employee of an agency who has participated personally and substantially in any of the following, as defined in implementing regulations:

(i) The drafting of a specification developed for that procurement.

(ii) The review and approval of a specification developed for that procurement.

(iii) The preparation or issuance of a procurement solicitation in that procurement.

(iv) The evaluation of bids or proposals for that procurement.

(v) The selection of sources for that procurement.

(vi) The conduct of negotiations in the procurement.

(vii) The review and approval of the award, modification, or extension of a contract in that procurement.

(viii) Such other specific procurement actions as may be specified in implementing regulations.

(B) For purposes of subparagraph (A), the term “employee of an agency” includes a contractor, subcontractor, consultant, expert, or adviser (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned.

(4) The term “contracting officer” means any official or employee of a Federal agency who has been authorized by the agency head or his or her designee to enter into, administer, or terminate contracts and make related determinations and findings.

(5) The term “Federal agency” has the meaning provided by section 472(b) of title 40.

(6) The term “proprietary information” means—

(A) information contained in a bid or proposal;

(B) cost or pricing data; or

(C) any other information submitted to the Government by a contractor and designated as proprietary, in accordance with law or regulation, by the contractor, the head of the agency, or the contracting officer.

(7) The term “source selection information” means information determined by the head of the agency or the contracting officer to be information—

(A) the disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and

(B) which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure;

as further defined by regulations issued pursuant to subsection (m) of this section.

(8) The term “designated agency ethics official” has the meaning given such term by section 109(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(Pub. L. 93-400, §27, as added Pub. L. 100-679, §6(a), Nov. 17, 1988, 102 Stat. 4063; amended Pub. L. 101-189, div. A, title VIII, §814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495-1498; Pub. L. 101-510, div. A, title XIV, §1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, §705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, §8301(e), Oct. 13, 1994, 108 Stat. 3397.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (h)(1)(B), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 601 of this title and Tables.

Section 109(3) of the Ethics in Government Act of 1978, referred to in subsec. (p)(8), is section 109(3) of

Pub. L. 95-521, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (e)(1)(B). Pub. L. 103-355 inserted “, except in the case of a contract for the procurement of commercial items,” after “certifies in writing to such contracting officer” in introductory provisions.

1991—Subsec. (p)(8). Pub. L. 102-25 substituted “has the meaning given such term by section 109(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.)” for “has the same meaning as the term ‘designated agency official’ in section 209(10) of the Ethics in Government Act of 1978 (92 Stat. 1850; 5 U.S.C. App.)”.

1990—Subsec. (f)(3)(D), (F). Pub. L. 101-510 redesignated subpar. (D), defining term “civil service”, as (F).

1989—Subsecs. (a)(1), (b)(1). Pub. L. 101-189, §814(a)(1)(A), inserted “, except as provided in subsection (c) of this section” before semicolon at end.

Subsec. (c). Pub. L. 101-189, §814(a)(1)(C), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1)(A)(i), (B)(ii), (2)(A), (3)(A). Pub. L. 101-189, §814(c)(1)(A)-(D), substituted “(d), or (f)” for “(c), or (e)”.

Subsec. (e)(7)(B)(ii). Pub. L. 101-189, §814(c)(1)(E), substituted “subsection (o)” for “subsection (m)”.

Subsec. (f). Pub. L. 101-189, §814(a)(2)(B), substituted “Restrictions resulting from procurement activities of procurement officials” for “Restrictions on Government officials and employees” as heading, and “(1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly—” for “No Government official or employee, civilian, or military, who has participated personally and substantially in the conduct of any Federal agency procurement or who has personally reviewed and approved the award, modification, or extension of any contract for such procurement shall—”.

Pub. L. 101-189, §814(a)(2)(A), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(2). Pub. L. 101-189, §814(a)(2)(C), added par. (2).

Subsec. (f)(3). Pub. L. 101-189, §814(d)(1), added par. (3).

Subsec. (g). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 101-189, §814(c)(2), substituted “subsection (o)” for “subsection (m)”.

Subsec. (h). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 101-189, §814(c)(3)(A), substituted “subsection (e)” for “subsection (d)”.

Subsec. (h)(2). Pub. L. 101-189, §814(c)(3)(B), substituted “(b) or (d)” for “(b) or (c)”.

Subsec. (h)(3). Pub. L. 101-189, §814(c)(3)(C), substituted “(i) and (j)” for “(h) and (i)”.

Subsec. (i). Pub. L. 101-189, §814(c)(4), substituted “(d), or (f)” for “(c), or (e)”.

Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (l).

Subsec. (j)(1). Pub. L. 101-189, §814(c)(5), substituted “subsection (p)” for “subsection (n)” and “subsection (o)” for “subsection (m)”.

Subsec. (k). Pub. L. 101-189, §814(a)(3), added subsec. (k). Former subsec. (k) redesignated (m).

Subsec. (l). Pub. L. 101-189, §814(a)(1)(B)(i), redesignated subsec. (j) as (l). Former subsec. (l) redesignated (n).

Subsec. (j)(1). Pub. L. 101-189, §814(c)(6)(A), substituted “subsections (b), (c), and (e)” for “subsection (b)”.

Subsec. (j)(2). Pub. L. 101-189, §814(c)(6)(B), substituted “subsections (b), (c), and (e)” for “subsection (b)” and “(d), or (f)” for “(c), or (e)”.

Subsecs. (m), (n). Pub. L. 101-189, §814(a)(1)(B)(i), redesignated subsecs. (k) and (l) as (m) and (n), respectively. Former subsecs. (m) and (n) redesignated (o) and (p), respectively.

Subsec. (o). Pub. L. 101-189, §814(a)(4), amended subsec. (o) generally. Prior to amendment, subsec. (o) read as follows: “Government-wide regulations and guidelines deemed appropriate to carry out this section shall be issued in the Federal Acquisition Regulation within 180 days after November 17, 1988.”

Pub. L. 101-189, §814(a)(1)(B)(i), redesignated subsec. (m) as (o).

Subsec. (p). Pub. L. 101-189, §814(a)(1)(B)(i), redesignated subsec. (n) as (p).

Subsec. (p)(1). Pub. L. 101-189, §814(b)(1), substituted “on the earliest specific date, as determined under implementing regulations, on which an authorized official orders or requests an action described in clauses (i)–(viii) of paragraph (3)(A),” for “with the development, preparation, and issuance of a procurement solicitation.”

Subsec. (p)(3)(A). Pub. L. 101-189, §814(b)(2), added subpar. (A) and struck out former subpar. (A) which read as follows: “The term ‘procurement official’ means any civilian or military official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement, as further defined by applicable implementing regulations.”

Subsec. (p)(8). Pub. L. 101-189, §814(b)(3), added par. (8).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section 6(b) of Pub. L. 100-679, as amended by Pub. L. 101-28, §1, May 15, 1989, 103 Stat. 57, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect July 16, 1989.”

REGULATIONS

Section 814(e) of Pub. L. 101-189 provided that: “Not later than 90 days after the date of the enactment of this section [Nov. 29, 1989], regulations implementing the amendments made by this section to the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) shall be issued in accordance with sections 6 and 25 of such Act (41 U.S.C. 405, 421), after coordination with the Director of the Office of Government Ethics.”

CLARIFICATION OF FREQUENCY OF CERTIFICATION BY EMPLOYEES AND CONTRACTORS

Section 815(b) of Pub. L. 101-510 provided that: “Not later than 30 days after the date of the enactment of this Act [Nov. 5, 1990], the regulations implementing section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) shall be revised to ensure that a contractor is required to obtain from each officer, employee, agent, representative, and consultant of the contractor only one certification (as described in clauses (i) and (ii) of that section) during the person’s employment or association with the contractor and that such certification shall be made at the earliest possible date after the person begins his or her employment or association with the contractor.”

SUSPENSION OF EFFECT OF SECTION

Section 815(a)(1) of Pub. L. 101-510 provided that subsection (f) of this section shall have no force or effect

during the period beginning on Dec. 1, 1990, and ending on May 31, 1991.

Pub. L. 101-194, title V, §507(1), Nov. 30, 1989, 103 Stat. 1759, provided that the provisions of this section shall have no force or effect during the period beginning Dec. 1, 1989, and ending one year after such date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 428 of this title; title 43 section 1475a.

§ 424. Repealed. Pub. L. 103-355, title VIII, § 8303(b), Oct. 13, 1994, 108 Stat. 3398

Section, Pub. L. 93-400, §28, as added Pub. L. 100-679, §9, Nov. 17, 1988, 102 Stat. 4069, related to establishment and duties of Advocate for the Acquisition of Commercial Products.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 425. Nonstandard contract clauses

The Federal Acquisition Regulatory Council shall promulgate regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

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

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

(Pub. L. 93-400, §29, as added Pub. L. 103-355, title I, §1093, Oct. 13, 1994, 108 Stat. 3273.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 426. Federal acquisition computer network (FACNET) architecture

(a) In general

(1) The Administrator shall establish a program for the development and implementation of a Federal acquisition computer network architecture (hereinafter in this section referred to as “FACNET”) that will be Government-wide and provide interoperability among users. The Administrator shall assign a program manager for FACNET and shall provide for overall direction of policy and leadership in the development, coordination, installation, operation, and completion of implementation of FACNET by executive agencies.

(2) In carrying out paragraph (1), the Administrator shall consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

(3) Government-wide FACNET capability (as defined in section 426a(b) of this title) shall be implemented not later than January 1, 2000.