

curement regulations", was repealed, and par. (5) of section 403 of this title was redesignated as par. (4), by Pub. L. 100-679, §3(c), Nov. 17, 1988, 102 Stat. 4056.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsecs. (a) and (b)(1), (2), is act June 30, 1949, ch. 288, 63 Stat. 393, as amended. Title III of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter IV (§251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

#### PRIOR PROVISIONS

A prior section 21 of Pub. L. 93-400, as added Pub. L. 98-369, div. B, title VII, §2732(a), July 18, 1984, 98 Stat. 1198, was renumbered section 23 by Pub. L. 98-577 and is classified to section 419 of this title.

#### AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-145 substituted "the item or process to which the technical data pertains" for "the technical data".

#### EFFECTIVE DATE

Section 301(c) of Pub. L. 98-577, as amended Pub. L. 99-145, title IX, §961(d)(3), Nov. 8, 1985, 99 Stat. 704, provided that: "The amendment made by subsection (a) [enacting this section] shall take effect on the date of enactment of this Act [Oct. 30, 1984]. The regulations required by such amendment shall be issued not later than October 19, 1985."

### § 418b. Publication of proposed regulations

#### (a) Effective date; procurement policy, regulations, procedure or form; publication in Federal Register

Except as provided in subsection (d) of this section, no procurement policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 60 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register pursuant to subsection (b) of this section. Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date.

#### (b) Publication in Federal Register

Subject to subsection (c) of this section, the head of the agency shall cause to be published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

#### (c) Notice; proposed policy; contents

Any notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

- (1) the text of the proposal or, if it is impracticable to publish the full text of the proposal,

a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

- (2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

#### (d) Waiver

(1) The requirements of subsections (a) and (b) of this section may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with such requirements impracticable.

(2) A procurement policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) of this section are waived under paragraph (1) shall be effective on a temporary basis if—

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

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

(3) After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) of this section under paragraph (1) may issue the final procurement policy, regulation, procedure, or form.

(Pub. L. 93-400, §22, as added Pub. L. 98-577, title III, §302(a), Oct. 30, 1984, 98 Stat. 3076; amended Pub. L. 103-355, title V, §5092, Oct. 13, 1994, 108 Stat. 3362; Pub. L. 104-106, div. D, title XLIII, §4321(a)(9), Feb. 10, 1996, 110 Stat. 671.)

#### AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104-106 made technical correction to directory language of Pub. L. 103-355, §5092(b). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103-355, §5092(a), substituted "60 days" for "30 days" and inserted at end "Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date."

Subsec. (d). Pub. L. 103-355, §5092(b), as amended by Pub. L. 104-106, designated second sentence of subsec. (d)(2) as subsec. (d)(3).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103-355 as enacted.

#### EFFECTIVE DATE

Section 302(b) of Pub. L. 98-577 provided that: "The procedures required by the amendment made by subsection (a) [enacting this section] shall apply with respect to procurement policies, regulations, procedures, or forms that an agency issues in final form on or after the date which is 30 days after the date of enactment of this Act [Oct. 30, 1984]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 8153; title 42 section 7256a; title 50 App. section 2159.

**§ 419. Contracting functions performed by Federal personnel**

**(a) Limitation on payment for advisory and assistance services**

(1) No person who is not a person described in subsection (b) of this section may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (b) of this section with adequate training and capabilities to perform such evaluations and analyses are not readily available within the agency or another Federal agency, as determined in accordance with standards and procedures prescribed in the Federal Acquisition Regulation.

(2) In the administration of this subsection, the head of each executive agency shall determine in accordance with the standards and procedures set forth in the Federal Acquisition Regulation whether—

(A) a sufficient number of personnel described in subsection (b) of this section within the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and

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

**(b) Covered personnel**

For purposes of subsection (a) of this section, the personnel described in this subsection are as follows:

(1) An employee, as defined in section 2105 of title 5.

(2) A member of the Armed Forces of the United States.

(3) A person assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

**(c) Rule of construction**

Nothing in this section is intended to affect the relationship between the Federal Government and a federally funded research and development center.

(Pub. L. 93-400, § 23, as added Pub. L. 103-355, title VI, § 6002(a), Oct. 13, 1994, 108 Stat. 3363.)

PRIOR PROVISIONS

A prior section 419, Pub. L. 93-400, § 23, formerly § 21, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1198; renumbered § 23, Pub. L. 98-577, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3074, related to annual report to be submitted to Congress by agency heads concerning actions taken to increase competition for contracts and reduce number and dollar value of noncompetitive contracts, prior to repeal by Pub. L. 103-355, title I, § 1092.

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.

REQUIREMENT FOR GUIDANCE AND REGULATIONS

Section 6002(b) of Pub. L. 103-355 provided that: “The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—

“(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

“(2) provide guidance and promulgate regulations regarding—

“(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

“(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.”

**§ 420. Repealed. Pub. L. 103-355, title II, § 2191, Oct. 13, 1994, 108 Stat. 3315**

Section, Pub. L. 93-400, § 24, as added Pub. L. 99-234, title II, § 201, Jan. 2, 1986, 99 Stat. 1759; amended Pub. L. 100-679, § 12, Nov. 17, 1988, 102 Stat. 4070, related to limits on allowable travel expenses of Government contractors.

**§ 421. Federal Acquisition Regulatory Council**

**(a) Establishment**

There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the “Council”) to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

**(b) Membership**

(1) The Council shall consist of the Administrator for Federal Procurement Policy and—

(A) the Secretary of Defense,

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

(C) the Administrator of General Services.

(2) Notwithstanding section 205(d) of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 486(d)], the officials specified in subparagraphs (A), (B), and (C) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official (A) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; or (B) if no official of such agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 414(3) of this title. No other official or employee may be designated to serve on the Council.

**(c) Functions**

(1) Subject to the provisions of section 405 of this title, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.), chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451, et seq.), shall jointly issue and maintain in accordance with subsection (f) of this section a single Government-wide procurement regulation, to be known as the “Federal Acquisition Regulation”.