

2679c; title 31 section 3567; title 33 section 1368; title 40 sections 3707, 11101; title 42 sections 290aa-3, 1395w-111, 5403; title 49 section 40118.

§ 404. Establishment of Office of Federal Procurement Policy; appointment of Administrator

(a) There is in the Office of Management and Budget an Office of Federal Procurement Policy (hereinafter referred to as the “Office”) to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies and to promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the “Administrator”), who shall be appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 93-400, § 5, Aug. 30, 1974, 88 Stat. 797; Pub. L. 104-106, div. D, title XLIII, § 4305(a)(1), Feb. 10, 1996, 110 Stat. 665.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the ‘Office’).”

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 506.

§ 405. Authority and functions of the Administrator

(a) Development of procurement policy; leadership

The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies. To the extent that the Administrator considers appropriate, in carrying out the policies and functions set forth in this chapter, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. These policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation and shall be followed by executive agencies in the procurement of—

- (1) property other than real property in being;
- (2) services, including research and development; and
- (3) construction, alteration, repair, or maintenance of real property.

(b) Government-wide procurement regulations

In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Govern-

ment-wide regulations, procedures and forms in a timely manner, including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a) of this section, the Administrator shall, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this chapter, prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—

- (1) property other than real property in being;
- (2) services, including research and development; and
- (3) construction, alteration, repair, or maintenance of real property.

(c) Noninterference with executive agencies

The authority of the Administrator under this chapter shall not be construed to—

- (1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or
- (2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(d) Enumeration of included functions

The functions of the Administrator shall include—

- (1) providing leadership and ensuring action by the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms;
- (2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;
- (3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;
- (4)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and
(B) ensuring executive agency compliance with the record requirements of section 417 of this title;
- (5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to—
(A) foster and promote the development of a professional acquisition workforce Government-wide;
- (B) promote and coordinate Government-wide research and studies to improve the

procurement process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

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

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

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

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

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

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

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

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

(6) administering the provisions of section 433 of this title;

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

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

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

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

(11) developing policies, in consultation with the Administrator of the Small Business Administration, that ensure that small businesses, qualified HUBZone small business concerns (as defined in section 632(p) of title 15), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women are provided with the maximum practicable opportunities to participate in procurements that are conducted for amounts below the simplified acquisition threshold;

(12) developing policies that will promote achievement of goals for participation by small businesses, qualified HUBZone small business concerns (as defined in section 632(p) of title 15), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women; and

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

(e) Consultation; assistance of existing executive agencies; advisory committees and inter-agency groups

In carrying out the functions set forth in subsection (d) of this section, the Administrator—

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

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

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

(f) Oversight of regulations promulgated by other agencies relating to procurement

The Administrator, with the concurrence of the Director of the Office of Management and Budget, and with consultation with the head of the agency or agencies concerned, may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with any policies, regulations, or procedures issued pursuant to subsection (a) of this section.

(g) Assignment, delegation, or transfer of functions prohibited

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

(h) Real property procurement; Office of Management and Budget

Nothing in this chapter shall be construed to—

(1) impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949¹ with respect to the procurement of real property; or

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

(i) Recipients of Federal grants or assistance

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

¹ See References in Text note below.

section by recipients of Federal grants or assistance under such programs.

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

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

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

(j) Policy regarding consideration of contractor past performance

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

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

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

(C) policies for ensuring that—

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

(ii) such information submitted by offerors is considered; and

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

(2) In the case of an offeror with respect to which there is no information on past contract performance or with respect to which information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.

(k) Annual reporting requirement

The Administrator shall submit to Congress, on an annual basis, an assessment of the progress made in executive agencies in implementing the policy regarding major acquisitions that is stated in section 263(a) of this title. The Administrator shall use data from existing management systems in making the assessment.

(Pub. L. 93-400, § 6, Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, § 4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, § 5, Dec. 1, 1983, 97 Stat. 1326; Pub. L. 98-369, div. B, title VII, § 2732(b)(1), July 18, 1984,

98 Stat. 1199; Pub. L. 100-679, § 3(a), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 103-355, title I, § 1091(b)(2), title V, §§ 5051(b), 5091, title VII, § 7108, Oct. 13, 1994, 108 Stat. 3272, 3351, 3361, 3378; Pub. L. 104-106, div. D, title XLIII, §§ 4307(b), 4321(h)(1), (2), 4322(a)(1), div. E, title LVI, § 5607(d), Feb. 10, 1996, 110 Stat. 668, 675, 677, 702; Pub. L. 104-201, div. A, title X, § 1074(f)(1), Sept. 23, 1996, 110 Stat. 2661; Pub. L. 105-85, div. A, title VIII, § 851(b), title X, § 1073(g)(2)(B), Nov. 18, 1997, 111 Stat. 1851, 1906; Pub. L. 105-135, title VI, § 604(f)(1), Dec. 2, 1997, 111 Stat. 2634.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (h)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title, the Act was repealed and reenacted by Pub. L. 107-217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1997—Subsec. (d)(5)(J). Pub. L. 105-85, § 1073(g)(2)(B)(i), substituted semicolon for period at end.

Subsec. (d)(6). Pub. L. 105-85, § 1073(g)(2)(B)(ii), realigned margins.

Subsec. (d)(11). Pub. L. 105-135, § 604(f)(1)(A), inserted “qualified HUBZone small business concerns (as defined in section 632(p) of title 15),” after “ensure that small businesses.”

Subsec. (d)(12). Pub. L. 105-135, § 604(f)(1)(B), inserted “qualified HUBZone small business concerns (as defined in section 632(p) of title 15),” after “participation by small businesses.”

Pub. L. 105-85, § 1073(g)(2)(B)(iii), substituted “small businesses” for “small business” after “individuals, and”.

Subsec. (k). Pub. L. 105-85, § 851(b), inserted “regarding major acquisitions that is” after “implementing the policy”.

1996—Subsec. (b). Pub. L. 104-106, § 4322(a)(1), struck out second comma after “subsection (a) of this section”.

Subsec. (d)(5)(A). Pub. L. 104-106, § 4307(b)(2)(A), substituted “the development of a professional acquisition workforce Government-wide” for “Government-wide career management programs for a professional procurement work force”.

Subsec. (d)(5)(B). Pub. L. 104-106, § 4307(b)(2)(B)(i), substituted “acquisition by the” for “procurement by the”.

Subsec. (d)(5)(C) to (J). Pub. L. 104-106, § 4307(b)(2)(B)(ii), (iii), added subpars. (C) to (J) and struck out former subpar. (C) which read as follows: “establish policies and procedures for the establishment and implementation of education and training programs authorized by this chapter, including the establishment and implementation of training, in conjunction with the General Services Administration, for critical procurement personnel designed to increase the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals, women, and other minorities in procurement activities conducted by an executive agency.”

Subsec. (d)(6). Pub. L. 104-106, § 4307(b)(3), added par. (6). Former par. (6) redesignated (7).

Subsec. (d)(7) to (10). Pub. L. 104-106, § 4307(b)(1), redesignated pars. (6) to (9) as (7) to (10), respectively. Former par. (10) redesignated (11).

Subsec. (d)(11). Pub. L. 104-106, § 4321(h)(2), which directed substitution of “small businesses” for “small business”, could not be executed because the words “small business” did not appear.

Pub. L. 104-106, § 4307(b)(1), redesignated par. (10) as (11). Former par. (11) redesignated (12).

Subsec. (d)(12). Pub. L. 104-106, § 4307(b)(1), redesignated par. (11) as (12). Former par. (12) redesignated (13).

Subsec. (d)(13). Pub. L. 104-106, §4321(h)(1), which directed transferring par. (12) to end of subsec. (d), was executed by transferring par. (13) to end of subsec. (d) to reflect the probable intent of Congress and the redesignation of par. (12) as (13) by Pub. L. 104-106, §4307(b)(1). See below.

Pub. L. 104-106, §4307(b)(1), redesignated par. (12) as (13).

Subsec. (f). Pub. L. 104-201 struck out “the policies set forth in section 401 of this title or” after “inconsistent with”.

Subsec. (h)(1). Pub. L. 104-106, §5607(d), struck out “of automatic data processing and telecommunications equipment and services or” after “with respect to the procurement”.

1994—Subsec. (d)(5)(C). Pub. L. 103-355, §7108(b), added subpar. (C).

Subsec. (d)(8), (9). Pub. L. 103-355, §5091, added pars. (8) and (9) at end. Former par. (8) redesignated (12).

Subsec. (d)(10), (11). Pub. L. 103-355, §7108(a), added pars. (10) and (11).

Subsec. (d)(12). Pub. L. 103-355, §5091(2), redesignated par. (8) and (12).

Subsec. (j). Pub. L. 103-355, §1091(b)(2), added subsec. (j).

Subsec. (k). Pub. L. 103-355, §5051(b), added subsec. (k).

1988—Subsec. (a). Pub. L. 100-679, §3(a)(1), substituted “procurement policies. These policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation and shall be” for “procurement policies which shall be implemented in the single system of Government-wide procurement regulations and shall be”.

Subsec. (b). Pub. L. 100-679, §3(a)(2), inserted “, including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a) of this section,” after “timely manner” and substituted “Administrator shall” for “Administrator may”.

Subsec. (d)(4). Pub. L. 100-679, §3(a)(3), added par. (4) and struck out former par. (4) which read as follows: “providing for a computer-based Federal Procurement Data System which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall collect, develop, and disseminate procurement data;”.

Subsec. (d)(5). Pub. L. 100-679, §3(a)(3), added par. (5) and struck out former par. (5) which read as follows: “providing for a Federal Acquisition Institute which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall—

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

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

Subsec. (f). Pub. L. 100-679, §3(a)(4), substituted “The Administrator, with the concurrence of the Director of the Office of Management and Budget, and with consultation with the head of the agency or agencies concerned,” for “The Director of the Office of Management and Budget”.

1984—Subsec. (e). Pub. L. 98-369 substituted “subsection (d)” for “subsection (c)”.

1983—Pub. L. 98-191 amended section generally, revising and restating as subsecs. (a), (c), (d), (e), (g), (h), and (i) provisions of former subsecs. (a), (f), (d), (e), (g), (j), and (b), respectively, and by inserting provisions set out in new subsecs. (b) and (f).

1979—Subsec. (a). Pub. L. 96-83, §4(a), substituted provisions setting forth the responsibilities of the Administrator with respect to the development and implementation of procurement policies, the coordination of programs to improve the quality and performance of personnel, and the development of a uniform procure-

ment system, for provisions setting forth responsibility of the Administrator for overall direction of procurement policy, and functions with respect to issuance of policy, regulations, procedures, and forms.

Subsec. (c). Pub. L. 96-83, §4(b), substituted provisions relating to development and proposal of a central management system, for provisions setting forth limitation of authority to procurement from appropriated funds and provisions relating to a study and report of procurement from nonappropriated funds.

Subsec. (d). Pub. L. 96-83, §4(c), substituted provisions setting forth the review, development, etc., functions of the Administrator with respect to procurement policies, regulations, procedures, and forms, procurement data, procurement personnel, and procurement contracts, for provisions setting forth the establishment, monitoring, etc., functions of the Administrator with respect to uniform procurement regulations, procurement policies, regulations, procedures, and forms, procurement data, and procurement personnel.

Subsec. (e). Pub. L. 96-83, §4(d), substituted provisions relating to consultation functions of the Administrator with respect to the development and implementation of the uniform procurement system, for provisions relating to the consultation functions of the Administrator with respect to the development of policies, regulations, procedures and forms to be authorized or prescribed by such Administrator.

Subsecs. (h) to (j). Pub. L. 96-83, §4(e), added subsecs. (h) to (j).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135 set out as a note under section 631 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4307(b), 4321(h)(1), (2), and 4322(a)(1) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

Amendment by section 5607(d) of Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

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 OF 1979 AMENDMENT

Amendment by Pub. L. 96-83 effective Oct. 1, 1979, see section 12 of Pub. L. 96-83, set out as a note under section 401 of this title.

FEDERAL SUPPORT FOR ENHANCEMENT OF STATE AND LOCAL ANTI-TERRORISM RESPONSE CAPABILITIES

Pub. L. 108-136, div. A, title VIII, §803, Nov. 24, 2003, 117 Stat. 1541, provided that:

“(a) **PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND SERVICES BY STATE AND LOCAL GOVERNMENTS.**—The Administrator for Federal Procurement Policy shall establish a program under which States and units of local government may procure through contracts entered into by the Department of Defense or the Department of Homeland Security anti-terrorism technologies or anti-terrorism services for the purpose of preventing, detecting, identifying, deterring, or recovering from acts of terrorism.

“(b) **AUTHORITIES.**—Under the program, the Secretary of Defense and the Secretary of Homeland Security may, but shall not be required to, award contracts using the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration.

“(c) **DEFINITION.**—In this section, the term ‘State or local government’ has the meaning provided in section 502(c)(3) of title 40, United States Code.”

STATUTORY AND REGULATORY REVIEW

Pub. L. 108-136, div. A, title XIV, §1423, Nov. 24, 2003, 117 Stat. 1669, provided that:

“(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act [Nov. 24, 2003], the Administrator for Federal Procurement Policy shall establish an advisory panel to review laws and regulations regarding the use of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines of responsibility, and the use of Governmentwide contracts.

“(b) MEMBERSHIP.—The panel shall be composed of at least nine individuals who are recognized experts in acquisition law and Government acquisition policy. In making appointments to the panel, the Administrator shall—

“(1) consult with the Secretary of Defense, the Administrator of General Services, the Committees on Armed Services and Government Reform of the House of Representatives, and the Committees on Armed Services and Governmental Affairs of the Senate; and

“(2) ensure that the members of the panel reflect the diverse experiences in both the public and private sectors, including academia.

“(c) DUTIES.—The panel shall—

“(1) review all Federal acquisition laws and regulations, and, to the extent practicable, governmentwide acquisition policies, with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting; and

“(2) make any recommendations for the modification of such laws, regulations, or policies that are considered necessary as a result of such review—

“(A) to protect the best interests of the Federal Government;

“(B) to ensure the continuing financial and ethical integrity of acquisitions by the Federal Government; and

“(C) to amend or eliminate any provisions in such laws, regulations, or policies that are unnecessary for the effective, efficient, and fair award and administration of contracts for the acquisition by the Federal Government of goods and services.

“(d) REPORT.—Not later than one year after the establishment of the panel, the panel shall submit to the Administrator and to the Committees on Armed Services and Government Reform of the House of Representatives and the Committees on Armed Services and Governmental Affairs of the Senate a report containing a detailed statement of the findings, conclusions, and recommendations of the panel.”

CENTER OF EXCELLENCE IN SERVICE CONTRACTING

Pub. L. 108-136, div. A, title XIV, §1431(b), Nov. 24, 2003, 117 Stat. 1671, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 24, 2003], the Administrator for Federal Procurement Policy shall establish a center of excellence in contracting for services. The center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.”

REPORTING OF BUNDLED CONTRACT OPPORTUNITIES

Section 414 of title IV of Pub. L. 105-135 provided that:

“(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect data regarding bundling of contract requirements when the contracting officer anticipates that the resulting contract price, including all options, is expected to exceed \$5,000,000. The data shall reflect a determination made by the contracting officer regarding whether a particular solicitation constitutes a contract bundling.

“(b) DEFINITIONS.—In this section, the term ‘bundling of contract requirements’ has the meaning given that term in section 3(o) of the Small Business Act (15 U.S.C. 632(o)) (as added by section 412 of this subtitle).”

CONGRESSIONAL FINDINGS REGARDING CONSIDERATION OF PAST CONTRACT PERFORMANCE

Section 1091(b)(1) of Pub. L. 103-355 provided that: “Congress makes the following findings:

“(A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding a contract.

“(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official.”

RESULTS-ORIENTED ACQUISITION PROCESS

Section 5052 of Pub. L. 103-355 provided that:

“(a) DEVELOPMENT OF PROCESS REQUIRED.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal agencies, shall develop results-oriented acquisition process guidelines for implementation by agencies in acquisitions of property and services by the Federal agencies. The process guidelines shall include the identification of quantitative measures and standards for determining the extent to which an acquisition of items other than commercial items by a Federal agency satisfies the needs for which the items are being acquired.

“(b) INAPPLICABILITY OF PROCESS TO DEPARTMENT OF DEFENSE.—The process guidelines developed pursuant to subsection (a) may not be applied to the Department of Defense.”

DEVELOPMENT OF DEFINITIONS REGARDING CERTAIN SMALL BUSINESS CONCERNS

Section 7107 of Pub. L. 103-355 provided that:

“(a) REVIEW REQUIRED.—(1) The Administrator for Federal Procurement Policy shall conduct a comprehensive review of Federal laws, as in effect on November 1, 1994, to identify and catalogue all of the provisions in such laws that define (or describe for definitional purposes) the small business concerns set forth in paragraph (2) for purposes of authorizing the participation of such small business concerns as prime contractors or subcontractors in—

“(A) contracts awarded directly by the Federal Government or subcontracts awarded under such contracts; or

“(B) contracts and subcontracts funded, in whole or in part, by Federal financial assistance under grants, cooperative agreements, or other forms of Federal assistance.

“(2) The small business concerns referred to in paragraph (1) are as follows:

“(A) Small business concerns owned and controlled by socially and economically disadvantaged individuals.

“(B) Minority-owned small business concerns.

“(C) Small business concerns owned and controlled by women.

“(D) Woman-owned small business concerns.

“(b) MATTERS TO BE DEVELOPED.—On the basis of the results of the review carried out under subsection (a), the Administrator for Federal Procurement Policy shall develop—

“(1) uniform definitions for the small business concerns referred to in subsection (a)(2);

“(2) uniform agency certification standards and procedures for—

“(A) determinations of whether a small business concern qualifies as a small business concern referred to in subsection (a)(2) under an applicable standard for purposes of contracts and subcontracts referred to in subsection (a)(1); and

“(B) reciprocal recognition by an agency of a decision of another agency regarding whether a small business concern qualifies as a small business concern referred to in subsection (a)(2) for such purposes; and

“(3) such other related recommendations as the Administrator determines appropriate consistent with the review results.

“(c) PROCEDURES AND SCHEDULE.—(1) The Administrator for Federal Procurement Policy shall provide for the participation in the review and activities under subsections (a) and (b) by representatives of—

“(A) the Small Business Administration (including the Office of the Chief Counsel for Advocacy);

“(B) the Minority Business Development Agency of the Department of Commerce;

“(C) the Department of Transportation;

“(D) the Environmental Protection Agency; and

“(E) such other executive departments and agencies as the Administrator considers appropriate.

“(2) In carrying out subsections (a) and (b), the Administrator shall consult with representatives of organizations representing—

“(A) minority-owned business enterprises;

“(B) women-owned business enterprises; and

“(C) other organizations that the Administrator considers appropriate.

“(3) Not later than 60 days after the date of the enactment of this Act [Oct. 13, 1994], the Administrator shall publish in the Federal Register a notice which—

“(A) lists the provisions of law identified in the review carried out under subsection (a);

“(B) describes the matters to be developed on the basis of the results of the review pursuant to subsection (b);

“(C) solicits public comment regarding the matters described in the notice pursuant to subparagraphs (A) and (B) for a period of not less than 60 days; and

“(D) addresses such other matters as the Administrator considers appropriate to ensure the comprehensiveness of the review and activities under subsections (a) and (b).

“(d) REPORT.—Not later than May 1, 1996, the Administrator for Federal Procurement Policy shall submit to the Committees on Small Business of the Senate and the House of Representatives a report on the results of the review carried out under subsection (a) and the actions taken under subsection (b). The report shall include a discussion of the results of the review, a description of the consultations conducted and public comments received, and the Administrator’s recommendations with regard to the matters identified under subsection (b).”

DATA COLLECTION THROUGH FEDERAL PROCUREMENT DATA SYSTEM

Section 10004 of Pub. L. 103-355 provided that:

“(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect from contracts in excess of the simplified acquisition threshold data identifying the following matters:

“(1) Contract awards made pursuant to competitions conducted pursuant to section 2323 of title 10, United States Code, or section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, 15 U.S.C. 644 note].

“(2) Awards to business concerns owned and controlled by women.

“(3) Number of offers received in response to a solicitation.

“(4) Task order contracts.

“(5) Contracts for the acquisition of commercial items.

“(b) DEFINITION.—In this section, the term ‘simplified acquisition threshold’ has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).”

PROFIT METHODOLOGY STUDY

Section 7 of Pub. L. 100-679 provided that:

“(a) IN GENERAL.—The Administrator shall conduct a study to develop a consistent methodology which executive agencies should use for measuring the profits earned by government contractors on procurements, other than procurements where the price is based on

adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public.

“(b) CONTRACTORS’ FINANCIAL DATA.—The methodology developed under subsection (a) shall include adequate procedures for verifying and maintaining the confidentiality of contractors’ financial data.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 408, 417, 421, 422 of this title; title 18 section 4124; title 31 section 6202; title 50 App. section 2154.

§ 405a. Uniform Federal procurement regulations and procedures

The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by Public Law 93-400 [41 U.S.C. 401 et seq.] and subject to the procedures set forth in such Public Law, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

(Pub. L. 95-507, title II, § 222, Oct. 24, 1978, 92 Stat. 1771.)

REFERENCES IN TEXT

Public Law 93-400, referred to in text, is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, known as the Office of Federal Procurement Policy Act, which is classified principally to this chapter (§ 401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Office of Federal Procurement Policy Act which comprises this chapter.

SUPERSEDITION OF INCONSISTENT STATUTORY PROVISIONS

Pub. L. 96-83, § 11, Oct. 10, 1979, 93 Stat. 652, provided that: “The provisions of the Act [Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, see Short Title note set out under section 401 of this title] as amended by this Act [see Short Title of 1979 Amendment note set out under section 401 of this title] shall supersede the provisions of section 222 of the Act of October 24, 1978, entitled ‘An Act to amend the Small Business Act and the Small Business Investment Act of 1958’ (41 U.S.C. 405a) to the extent they are inconsistent therewith.”

DEFINITIONS

The definitions in section 637c of Title 15, Commerce and Trade, apply to this section.

§ 405b. Conflict of interest standards for individuals providing consulting services

(a) Issuance of policy and regulations

Not later than 90 days after October 1, 1988, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not