

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

Subsec. (l)(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 2002 AMENDMENT

Amendment by Pub. L. 107-347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107-347, set

out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

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.

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 title 5 sections 3374, 3704; title 15 sections 637, 657a, 657f; title 22 section 3861; title 42 sections 1396a, 1396u-2; title 43 section 1475a; title 49 section 40110.

§ 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. Contract clauses and certifications

(a) 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.

(b) Construction of certification requirements

A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(c) Prohibition on certification requirements

(1) A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

- (A) the certification requirement is specifically imposed by statute; or
- (B) written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

(2)(A) A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

- (i) the certification requirement is specifically imposed by statute; or
- (ii) written justification for such certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency, and the head of the executive agency approves in writing the inclusion of such certification requirement.

(B) For purposes of subparagraph (A), the term “head of the executive agency” with respect to a military department means the Secretary of Defense.

(Pub. L. 93-400, §29, as added Pub. L. 103-355, title I, §1093, Oct. 13, 1994, 108 Stat. 3273; amended Pub. L. 104-106, div. D, title XLIII, §4301(b)(2)(A), (c), Feb. 10, 1996, 110 Stat. 657, 658.)

AMENDMENTS

1996—Pub. L. 104-106 substituted “Contract clauses and certifications” for “Nonstandard contract clauses” in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsecs. (b) and (c).

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.

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.

CURRENT CERTIFICATION REQUIREMENTS

Section 4301(b)(1) of Pub. L. 104-106 provided that:

“(A) Not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996], the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

“(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

“(ii) the Administrator approves in writing the retention of the certification requirement.

“(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

“(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

“(II) the head of the executive agency approves in writing the retention of such certification requirement.

“(ii) For purposes of clause (i), the term ‘head of the executive agency’ with respect to a military department means the Secretary of Defense.”

§ 426. Use of electronic commerce in Federal procurement

(a) In general

The head of each executive agency, after consulting with the Administrator, shall establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of its procurement system.

(b) Applicable standards

In conducting electronic commerce, the head of an agency shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

(c) Agency procedures

The head of each executive agency shall ensure that systems, technologies, procedures, and processes established pursuant to this section—

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

(2) are implemented only after granting due consideration to the use or partial use, as appropriate, of existing electronic commerce and electronic data interchange systems and infrastructures such¹ the Federal acquisition computer network architecture known as FACNET;

(3) facilitate access to Federal Government procurement opportunities, including opportu-

¹ So in original. Probably should be followed by “as”.