

1973—Subsec. (d). Pub. L. 93-57 defined “United States” to include Canton Island.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2 of Pub. L. 93-57 provided that: “The amendment made hereby [amending this section] shall be effective with respect to all contracts entered into at any time after the date of enactment [July 6, 1973].”

§ 358. Wage and fringe benefit determinations of Secretary

It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 351¹ of this title should be made with respect to all contracts subject to this chapter, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this chapter which are entered into during the applicable fiscal year:

- (1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.
- (2) For the fiscal year ending June 30, 1974, all contracts, under which more than twenty service employees are to be employed.
- (3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.
- (4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.
- (5) On or after July 1, 1976, all contracts under which more than five service employees are to be employed.

(Pub. L. 89-286, §10, as added Pub. L. 92-473, §5, Oct. 9, 1972, 86 Stat. 790; amended Pub. L. 94-273, §29, Apr. 21, 1976, 90 Stat. 380.)

AMENDMENTS

1976—Par. (5). Pub. L. 94-273 substituted “On or after July 1, 1976” for “For the fiscal year ending June 30, 1977, and for each fiscal year thereafter”.

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

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| <p>Sec.
401, 402.
403.
404.

405.
405a.
405b.
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407.
408.
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413.</p> | <p>Repealed.
Definitions.
Establishment of Office of Federal Procurement Policy; appointment of Administrator.
Authority and functions of the Administrator.
Uniform Federal procurement regulations and procedures.
Conflict of interest standards for individuals providing consulting services.
Administrative powers.
Repealed.
Applicability of existing laws.
Repealed.
Authorization of appropriations.
Delegation of authority by Administrator.
Comptroller General's access to information from Administrator; rule making procedure.
Tests of innovative procurement methods and procedures.</p> |
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¹ So in original. Probably should be section “351(a)”.

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| <p>Sec.
414.

414a.
414b.
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417a.
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418a.
418b.
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426a.
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428a.
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431a.
432.
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437.
438.</p> | <p>Chief Acquisition Officers and senior procurement executives.
Personnel evaluation.
Chief Acquisition Officers Council.
Repealed.
Procurement notice.
Record requirements.
Procurement data.
Advocates for competition.
Rights in technical data.
Publication of proposed regulations.
Contracting functions performed by Federal personnel.
Repealed.
Federal Acquisition Regulatory Council.
Cost Accounting Standards Board.
Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information.
Repealed.
Contract clauses and certifications.
Use of electronic commerce in Federal procurement.
Repealed.
Simplified acquisition procedures.
Procedures applicable to purchases below micro-purchase threshold.
Special emergency procurement authority.
List of laws inapplicable to contracts not greater than simplified acquisition threshold in Federal Acquisition Regulation.
List of laws inapplicable to procurements of commercial items in Federal Acquisition Regulation.
Commercially available off-the-shelf item acquisitions: lists of inapplicable laws in Federal Acquisition Regulation.
Inflation adjustment of acquisition-related dollar thresholds.
Value engineering.
Acquisition workforce.
Modular contracting for information technology.
Levels of compensation of certain contractor personnel not allowable as costs under certain contracts.
Protection of constitutional rights of contractors.
Incentives for efficient performance of services contracts.
Civilian Board of Contract Appeals.</p> |
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§§ 401, 402. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4305(a)(2), Feb. 10, 1996, 110 Stat. 665

Section 401, Pub. L. 93-400, §2, Aug. 30, 1974, 88 Stat. 796; Pub. L. 96-83, §2, Oct. 10, 1979, 93 Stat. 648; Pub. L. 98-191, §3, Dec. 1, 1983, 97 Stat. 1325; Pub. L. 100-679, §2(a), Nov. 17, 1988, 102 Stat. 4055; Pub. L. 103-355, title I, §1091(a), Oct. 13, 1994, 108 Stat. 3272, stated policy of United States Government relating to procurement of property and services.

Section 402, Pub. L. 93-400, §3, Aug. 30, 1974, 88 Stat. 796; Pub. L. 100-679, §2(b), Nov. 17, 1988, 102 Stat. 4055, stated findings of Congress and purpose of this chapter.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 12 of Pub. L. 96-83 provided that: “Except to the extent otherwise provided therein, the amendments made by this Act [see Short Title of 1979 Amendment note below] shall take effect on October 1, 1979.”

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XIV, §1401, Nov. 24, 2003, 117 Stat. 1663, provided that: “This title [enacting sec-

tions 414b, 428a, and 437 of this title, amending sections 403, 414, 433, and 436 of this title, section 2855 of Title 10, Armed Forces, and section 1115 of Title 31, Money and Finance, enacting provisions set out as notes under sections 253, 253a, 405, 428a, and 433 of this title and section 1103 of Title 40, Public Buildings, Property, and Works, amending provisions set out as notes under section 264 of this title, section 2304 of Title 10, and section 501 of Title 31, and repealing provisions set out as a note under section 2302 of Title 10] may be cited as the ‘Services Acquisition Reform Act of 2003’.”

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100-679 provided that: “This Act [enacting sections 421 to 424 of this title, amending this section, sections 402, 403, 405, 410, and 420 of this title, sections 5312 to 5315, 8331, 8401, 8701, and 8901 of Title 5, Government Organization and Employees, and section 541 of former Title 40, Public Buildings, Property, and Works, repealing section 2168 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 405 and 423 of this title and section 5312 of Title 5] may be cited as the ‘Office of Federal Procurement Policy Act Amendments of 1988’.”

SHORT TITLE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-191 provided: “That this Act [enacting sections 413 to 415 of this title, amending this section, sections 5, 6a-1, 252, 403, 405, 407, 409, 410, and 411 of this title, section 831h of Title 16, Conservation, and sections 474, 481, and 487 of former Title 40, Public Buildings, Property, and Works] may be cited as the ‘Office of Federal Procurement Policy Act Amendments of 1983’.”

SHORT TITLE OF 1979 AMENDMENT

Section 1(a) of Pub. L. 96-83 provided that: “This Act [amending this section, sections 403, 405, 407, and 409 to 412 of this title, and sections 474, 481, and 487 of former Title 40, Public Buildings, Property and Works, and enacting provisions set out as notes under this section and section 405a of this title] may be cited as the ‘Office of Federal Procurement Policy Act Amendments of 1979’.”

SHORT TITLE

Section 1(a) of Pub. L. 93-400, as amended by Pub. L. 103-355, title X, §10005(a)(1), Oct. 13, 1994, 108 Stat. 3406, provided that: “This Act [enacting this chapter and amending section 5315 of Title 5, Government Organization and Employees, and sections 474, 481, and 487 of former Title 40, Public Buildings, Property, and Works] may be cited as the ‘Office of Federal Procurement Policy Act’.”

STYLISTIC CONSISTENCY

Section 10005(b)(1) of Pub. L. 103-355 provided that: “The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended so that the section designation and section heading of each section of such Act is in the same form and typeface as the section designation and heading of this section [108 Stat. 3406].”

REQUIREMENTS FOR USE OF APPROPRIATIONS BY EXECUTIVE AGENCIES FOR SERVICES BY CONTRACT

Pub. L. 102-394, title V, §502, Oct. 6, 1992, 106 Stat. 1825, provided that: “No part of any appropriation contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be expended by an executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), pursuant to any obligation for services by contract, unless such executive agency has awarded and entered into such contract in full compliance with such Act and regulations promulgated thereunder.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title V, §502, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101-517, title V, §502, Nov. 5, 1990, 104 Stat. 2221.

Pub. L. 101-166, title V, §502, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100-202, §101(h) [title V, §502], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.

Pub. L. 99-500, §101(i) [H.R. 5233, title V, §502], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, §101(i) [H.R. 5233, title V, §502], Oct. 30, 1986, 100 Stat. 3341-287.

Pub. L. 99-178, title V, §502, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98-619, title V, §502, Nov. 8, 1984, 98 Stat. 3332.

Pub. L. 98-139, title V, §502, Oct. 31, 1983, 97 Stat. 899.

Pub. L. 97-377, title I, §101(e)(1) [title V, §502], Dec. 21, 1982, 96 Stat. 1878, 1904.

EX. ORD. NO. 12073. FEDERAL PROCUREMENT IN LABOR SURPLUS AREAS

Ex. Ord. No. 12073, Aug. 16, 1978, 43 F.R. 36873, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

1-1. PROCUREMENTS IN LABOR SURPLUS AREAS

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation’s economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95-89 (15 U.S.C. 644).

1-2. ADMINISTRATOR OF GENERAL SERVICES

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.

1-204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

1-3. AGENCY RESPONSIBILITIES

1-301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1-302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1-303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12092

Ex. Ord. No. 12092, Nov. 1, 1978, 43 F.R. 51375, as amended by Ex. Ord. No. 12161, Sept. 28, 1979, 44 F.R.

56663, which related to the prohibition against inflationary procurement practices, was revoked by Ex. Ord. No. 12288, Jan. 29, 1981, 46 F.R. 10135.

EXECUTIVE ORDER NO. 12352

Ex. Ord. No. 12352, Mar. 17, 1982, 47 F.R. 12125, which related to Federal procurement reform to support mission accomplishment more effectively, was revoked by Ex. Ord. No. 12931, § 4, Oct. 13, 1994, 59 F.R. 52388, set out below.

EXECUTIVE ORDER NO. 12818

Ex. Ord. No. 12818, Oct. 23, 1992, 57 F.R. 48713, which prohibited executive agencies from requiring labor agreements on Federal or federally funded construction projects, was revoked by Ex. Ord. No. 12836, § 1, Feb. 1, 1993, 58 F.R. 7045, which was itself revoked as it relates to notification of employee rights concerning payment of union dues or fees by Ex. Ord. No. 13201, § 11, Feb. 17, 2001, 66 F.R. 11221, and as it relates to project agreements by Ex. Ord. No. 13202, § 8, Feb. 17, 2001, 66 F.R. 11226.

EX. ORD. NO. 12931. FEDERAL PROCUREMENT REFORM

Ex. Ord. No. 12931, Oct. 13, 1994, 59 F.R. 52387, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement, it is hereby ordered as follows:

SECTION 1. To make procurement more effective in support of mission accomplishment and consistent with recommendations of the National Performance Review, heads of executive agencies engaged in the procurement of supplies and services shall:

(a) Review agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures over and above those required by statute, and, where practicable, replace them with guiding principles that encourage and reward innovation;

(b) Review existing and planned agency programs to assure that such programs meet agency mission needs;

(c) Ensure that procurement organizations focus on measurable results and on increased attention to understanding and meeting customer needs;

(d) Increase the use of commercially available items where practicable, place more emphasis on past contractor performance, and promote best value rather than simply low cost in selecting sources for supplies and services;

(e) Ensure that simplified acquisition procedures are used, to the maximum extent practicable, for procurements under the simplified acquisition threshold in order to reduce administrative burdens and more effectively support the accomplishment of agency missions;

(f) Expand the use of the Government purchase card by the agency and take maximum advantage of the micro-purchase authority provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103-355, see Short Title of 1994 Amendment note set out under section 251 of this title] by delegating the authority, to the maximum extent practicable, to the offices that will be using the supplies or services to be purchased;

(g) Establish clear lines of contracting authority and accountability;

(h) Establish career education programs for procurement professionals, including requirements for successful completion of educational requirements or mandatory training for entry level positions and for promotion to higher level positions, in order to ensure a highly qualified procurement work force;

(i) Designate a Procurement Executive with agency-wide responsibility to oversee development of procurement goals, guidelines, and innovation, measure and evaluate procurement office performance against stated goals, enhance career development of the procure-

ment work force, and advise the agency heads whether goals are being achieved; and

(j) Review existing and planned information technology acquisitions and contracts to ensure that the agency receives the best value with regard to price and technology, and consider alternatives in cases where best value is not being obtained.

SEC. 2. The Director of the Office of Personnel Management, in consultation with the heads of executive agencies, shall ensure that personnel policies and classification standards meet the needs of executive agencies for a professional procurement work force.

SEC. 3. The Administrator of the Office of Federal Procurement Policy, after consultation with the Director of the Office of Management and Budget, shall work jointly with the heads of executive agencies to provide broad policy guidance and overall leadership necessary to achieve procurement reform, including, but not limited to:

(a) Coordinating Government-wide efforts;

(b) Assisting executive agencies in streamlining guidance for procurement processes;

(c) Identifying desirable Government-wide procurement system criteria; and

(d) Identifying major inconsistencies in law and policies relating to procurement that impose unnecessary burdens on the private sector and Federal procurement officials, and, following coordination with executive agencies, submitting necessary legislative initiatives to the Office of Management and Budget for the resolution of such inconsistencies.

SEC. 4. Executive Order No. 12352 is revoked.

WILLIAM J. CLINTON.

EXECUTIVE ORDER NO. 12969

Ex. Ord. No. 12969, Aug. 8, 1995, 60 F.R. 40989, which provided for Federal agencies to contract with companies that report in a public manner on toxic chemicals released to the environment, was revoked by Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604, formerly set out as a note under section 4321 of Title 42, The Public Health and Welfare.

STREAMLINING PROCUREMENT THROUGH ELECTRONIC COMMERCE

Memorandum of President of the United States, Oct. 28, 1993, 58 F.R. 58095, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

The Federal Government spends \$200 billion annually buying goods and services. Unfortunately, the red tape and burdensome paperwork of the current procurement system increases costs, produces unnecessary delays, and reduces Federal work force productivity. Moving to an electronic commerce system to simplify and streamline the purchasing process will promote customer service and cost-effectiveness. The electronic exchange of acquisition information between the private sector and the Federal Government also will increase competition by improving access to Federal contracting opportunities for the more than 300,000 vendors currently doing business with the Government, particularly small businesses, as well as many other vendors who find access to bidding opportunities difficult under the current system. For these reasons, I am committed to fundamentally altering and improving the way the Federal Government buys goods and services by ensuring that electronic commerce is implemented for appropriate Federal purchases as quickly as possible.

1. OBJECTIVES.

The objectives of this electronic commerce initiative are to:

(a) exchange procurement information—such as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents—electronically between the private sector and the Federal Government to the maximum extent practical;

(b) provide businesses, including small, small disadvantaged, and women-owned businesses, with greater access to Federal procurement opportunities;

(c) ensure that potential suppliers are provided simplified access to the Federal Government's electronic commerce system;

(d) employ nationally and internationally recognized data formats that serve to broaden and ease the electronic interchange of data; and

(e) use agency and industry systems and networks to enable the Government and potential suppliers to exchange information and access Federal procurement data.

2. IMPLEMENTATION.

The President's Management Council, in coordination with the Office of Federal Procurement Policy of the Office of Management and Budget, and in consultation with appropriate Federal agencies with applicable technical and functional expertise, as necessary, shall provide overall leadership, management oversight, and policy direction to implement electronic commerce in the executive branch through the following actions:

(a) by March 1994, define the architecture for the Government-wide electronic commerce acquisition system and identify executive departments or agencies responsible for developing, implementing, operating, and maintaining the Federal electronic system;

(b) by September 1994, establish an initial electronic commerce capability to enable the Federal Government and private vendors to electronically exchange standardized requests for quotations, quotes, purchase orders, and notice of awards and begin Government-wide implementation;

(c) by July 1995, implement a full scale Federal electronic commerce system that expands initial capabilities to include electronic payments, document interchange, and supporting databases; and

(d) by January 1997, complete Government-wide implementation of electronic commerce for appropriate Federal purchases, to the maximum extent possible.

This implementation schedule should be accelerated where practicable.

The head of each executive department or agency shall:

(a) ensure that budgetary resources are available, within approved budget levels, for electronic commerce implementation in each respective department or agency;

(b) assist the President's Management Council in implementing the electronic commerce system as quickly as possible in accordance with the schedules established herein; and

(c) designate one or more senior level employees to assist the President's Management Council and serve as a point of contact for the development and implementation of the Federal electronic commerce system within each respective department or agency.

3. NO PRIVATE RIGHTS CREATED.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 403. Definitions

As used in this chapter:

(1) The term "executive agency" means—

(A) an executive department specified in section 101 of title 5;

(B) a military department specified in section 102 of such title;

(C) an independent establishment as defined in section 104(1) of such title; and

(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31.

(2) The term "procurement" includes all stages of the process of acquiring property or

services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

(3) The term "procurement system" means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function.

(4) The term "standards" means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system.

(5) The term "competitive procedures" means procedures under which an agency enters into a contract pursuant to full and open competition.

(6) The term "full and open competition", when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement.

(7) The term "responsible source" means a prospective contractor who—

(A) has adequate financial resources to perform the contract or the ability to obtain such resources;

(B) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(C) has a satisfactory performance record;

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

(E) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

(F) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(8) The term "technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(9)(A) The term "major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property; and

(B) a system shall be considered a major system if (i) the Department of Defense is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to be more than \$75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for