

“(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an agency shall consult with the Administrator for Federal Procurement Policy.

“(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303 of this title shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).”

Subsec. (a)(1). Pub. L. 105-129 inserted “of section 2303(a) of this title” after “paragraphs (1), (5), and (6)”.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 1(a)(2) of Pub. L. 105-129 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment to section 2302c of title 10, United States Code, made by section 850(f)(3)(A) of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105-85] to which the amendment made by paragraph (1) relates.”

Section 850(g) of Pub. L. 105-85 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 2304 of this title, section 637 of Title 15, Commerce and Trade, section 1501 of former Title 40, Public Buildings, Property, and Works, and sections 252c, 253, 416, 426, and 427 of Title 41, Public Contracts, repealing section 426a of Title 41, amending provisions set out as a note under section 413 of Title 41, and repealing provisions set out as a note under section 426a of Title 41] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

“(2) The repeal made by subsection (c) of this section [repealing provisions set out as a note under section 426a of Title 41] shall take effect on the date of the enactment of this Act.”

EFFECTIVE DATE

Pub. L. 103-355, title IX, §9002(c), Oct. 13, 1994, 108 Stat. 3402, provided that: “A FACNET capability may be implemented and used in an agency before the promulgation of regulations implementing this section (as provided in section 10002) [108 Stat. 3404, formerly set out as a Regulations note under section 251 of former Title 41, Public Contracts]. If such implementation and use occurs, the period for submission of bids or proposals under section 18(a)(3)(B) of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1708(e)(1)(B)], in the case of a solicitation through FACNET, may be less than the period otherwise applicable under that section, but shall be at least 10 days. The preceding sentence shall not be in effect after September 30, 1995.”

**§ 2302d. Major system: definitional threshold amounts**

(a) DEPARTMENT OF DEFENSE SYSTEMS.—For purposes of section 2302(5) of this title, a system for which the Department of Defense is responsible shall be considered a major system if—

- (1) the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$115,000,000 (based on fiscal year 1990 constant dollars); or
- (2) the eventual total expenditure for procurement for the system is estimated to be more than \$540,000,000 (based on fiscal year 1990 constant dollars).

(b) CIVILIAN AGENCY SYSTEMS.—For purposes of section 2302(5) of this title, a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—

(1) \$750,000 (based on fiscal year 1980 constant dollars); or

(2) the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled “Major Systems Acquisitions”.

(c) ADJUSTMENT AUTHORITY.—(1) The Secretary of Defense may adjust the amounts and the base fiscal year provided in subsection (a) on the basis of Department of Defense escalation rates.

(2) An amount, as adjusted under paragraph (1), that is not evenly divisible by \$5,000,000 shall be rounded to the nearest multiple of \$5,000,000. In the case of an amount that is evenly divisible by \$2,500,000 but not evenly divisible by \$5,000,000, the amount shall be rounded to the next higher multiple of \$5,000,000.

(3) An adjustment under this subsection shall be effective after the Secretary transmits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the adjustment.

(Added Pub. L. 104-201, div. A, title VIII, §805(a)(2), Sept. 23, 1996, 110 Stat. 2605; amended Pub. L. 105-85, div. A, title X, §1073(a)(41), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(3). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1997—Subsec. (a)(2). Pub. L. 105-85 substituted “procurement for the system is estimated to be” for “procurement of”.

**§ 2303. Applicability of chapter**

(a) This chapter applies to the procurement by any of the following agencies, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

- (1) The Department of Defense.
- (2) The Department of the Army.
- (3) The Department of the Navy.
- (4) The Department of the Air Force.
- (5) The Coast Guard.
- (6) The National Aeronautics and Space Administration.

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85-568, title III, §301(b), July 29, 1958, 72 Stat. 432; Pub. L. 98-369, div. B, title VII, §2722(b), July 18, 1984, 98 Stat. 1187.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2303(a) .....	41:151(a).	Feb. 19, 1948, ch. 65.
2303(b) .....	41:158 (clause (b), less last 5 words).	§§2(a), 9 (clause (b)), 62 Stat. 21, 24.
2303(c) .....	41:158 (last 5 words of clause (b)).	

In subsection (a), the words “all property named in subsection (b), and all services” are substituted for the words “for supplies or services”. The words “(each being hereinafter called the agency)”, are omitted,

since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words “United States” before the words “Coast Guard” are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word “supplies”. Throughout the revised chapter reference is made to “property or services covered by this chapter”, instead of “supplies”, since the word “supplies” is defined in section 101(26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101(26) of this title. The word “ships” and the words “of every character, type, and description”, after the word “vessels”, are omitted as covered by the definition of “vessel” in section 1 of title 1.

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, §2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) “procurement” for “purchase, and contract to purchase,” and “(other than land) and all services” for “named in subsection (b), and all services,”.

Subsec. (a)(1) to (6). Pub. L. 98-369, §2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98-369, §2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

1958—Subsec. (a)(5). Pub. L. 85-568 substituted “The National Aeronautics and Space Administration” for “The National Advisory Committee for Aeronautics”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 2302 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90-500, title IV, §404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97-295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

#### [§ 2303a. Repealed. Pub. L. 98-577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98-525, title XII, §1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations.

Section, pursuant to section 1212(b) of Pub. L. 98-525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98-525. Pub. L. 98-525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98-577.

#### § 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;