

Budget shall comply with this chapter with respect to the specific matters covered by this chapter.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1237.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 11301 | 40:1411. | Pub. L. 104-106, div. E, title LI, §5111, Feb. 10, 1996, 110 Stat. 680. |

§ 11302. Capital planning and investment control

(a) FEDERAL INFORMATION TECHNOLOGY.—The Director of the Office of Management and Budget shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44.

(b) USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.—The Director shall promote and improve the acquisition, use, security, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) USE OF BUDGET PROCESS.—

(1) ANALYZING, TRACKING, AND EVALUATING CAPITAL INVESTMENTS.—As part of the budget process, the Director shall develop a process for analyzing, tracking, and evaluating the risks, including information security risks, and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks, including information security risks, associated with the investments.

(2) REPORT TO CONGRESS.—At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies for information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) INFORMATION TECHNOLOGY STANDARDS.—The Director shall oversee the development and implementation of standards and guidelines pertaining to federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 11331 of this title and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3).

(e) DESIGNATION OF EXECUTIVE AGENTS FOR ACQUISITIONS.—The Director shall designate the head of one or more executive agencies, as the Director considers appropriate, as executive agent for Government-wide acquisitions of information technology.

(f) USE OF BEST PRACTICES IN ACQUISITIONS.—The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) ASSESSMENT OF OTHER MODELS FOR MANAGING INFORMATION TECHNOLOGY.—On a continuing basis, the Director shall assess the experiences of executive agencies, state and local governments, international organizations, and the private sector in managing information technology.

(h) COMPARISON OF AGENCY USES OF INFORMATION TECHNOLOGY.—The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) MONITORING TRAINING.—The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) INFORMING CONGRESS.—The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of the agency missions through the use of the best practices in information resources management.

(k) COORDINATION OF POLICY DEVELOPMENT AND REVIEW.—The Director shall coordinate with the Office of Federal Procurement Policy the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with federal acquisition of information technology.

(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1237; Pub. L. 108-458, title VIII, §8401(1), (2), Dec. 17, 2004, 118 Stat. 3869.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 11302 | 40:1412. | Pub. L. 104-106, div. E, title LI, §5112, Feb. 10, 1996, 110 Stat. 680. |

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-458, §8401(1), inserted “security,” after “use.”

Subsec. (c)(1). Pub. L. 108-458, §8401(2), inserted “, including information security risks,” after “evaluating the risks” and “costs, benefits, and risks”.

APPROPRIATE USE OF REQUIREMENTS REGARDING EXPERIENCE AND EDUCATION OF CONTRACTOR PERSONNEL IN THE PROCUREMENT OF INFORMATION TECHNOLOGY SERVICES

Pub. L. 106-398, §1 [[div. A], title VIII, §813], Oct. 30, 2000, 114 Stat. 1654, 1654A-214, provided that:

“(a) AMENDMENT OF THE FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405 and 421) [see 41 U.S.C. 1121, 1303] shall be amended to address the use, in the procurement of information technology services, of requirements regarding the experience and education of contractor personnel.

“(b) CONTENT OF AMENDMENT.—The amendment issued pursuant to subsection (a) shall, at a minimum, provide that solicitations for the procurement of information technology services shall not set forth any minimum experience or educational requirement for proposed contractor personnel in order for a bidder to be eligible for award of a contract unless—

“(1) the contracting officer first determines that the needs of the executive agency cannot be met without any such requirement; or

“(2) the needs of the executive agency require the use of a type of contract other than a performance-based contract.

“(c) GAO REPORT.—Not later than one year after the date on which the regulations required by subsection (a) are published in the Federal Register, the Comptroller General shall submit to Congress an evaluation of—

“(1) executive agency compliance with the regulations; and

“(2) conformance of the regulations with existing law, together with any recommendations that the Comptroller General considers appropriate.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘executive agency’ has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (former 41 U.S.C. 403(1)) [now 41 U.S.C. 133].

“(2) The term ‘information technology’ has the meaning given that term in section 5002(3) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)) [now 40 U.S.C. 11101(6)].

“(3) The term ‘performance-based’, with respect to a contract, means that the contract includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.’”

§ 11303. Performance-based and results-based management

(a) IN GENERAL.—The Director of the Office of Management and Budget shall encourage the use of performance-based and results-based management in fulfilling the responsibilities assigned under section 3504(h) of title 44.

(b) EVALUATION OF AGENCY PROGRAMS AND INVESTMENTS.—

(1) REQUIREMENT.—The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) DIRECTION FOR EXECUTIVE AGENCY ACTION.—The Director shall issue to the head of each executive agency clear and concise direction that the head of each agency shall—

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system—

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization; or

(ii) whether the function should be performed by the executive agency and, if so, whether the function should be performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency’s mission-related processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) GUIDANCE FOR MULTIAGENCY INVESTMENTS.—The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Federal Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) PERIODIC REVIEWS.—The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) ENFORCEMENT OF ACCOUNTABILITY.—

(A) IN GENERAL.—The Director may take any action that the Director considers appropriate, including an action involving the budgetary process or appropriations management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) SPECIFIC ACTIONS.—Actions taken by the Director may include—

(i) recommending a reduction or an increase in the amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of title 31;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other administrative controls over appropriations to restrict the availability of amounts for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1238.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 11303 | 40:1413. | Pub. L. 104–106, div. E, title LI, §5113, Feb. 10, 1996, 110 Stat. 681. |

SUBCHAPTER II—EXECUTIVE AGENCIES

§ 11311. Responsibilities

In fulfilling the responsibilities assigned under chapter 35 of title 44, the head of each executive agency shall comply with this subchapter with respect to the specific matters covered by this subchapter.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1239.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 11311 | 40:1421. | Pub. L. 104–106, div. E, title LI, §5121, Feb. 10, 1996, 110 Stat. 683. |