

4726 (111th Cong.). See 156 Cong. Rec. S8442, Dec. 2, 2010 (daily ed.).

REQUIREMENT FOR GUIDANCE AND REGULATIONS

Pub. L. 103-355, title VI, §6002(b), Oct. 13, 1994, 108 Stat. 3363, provided that: “The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302(a)] shall—

“(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

“(2) provide guidance and promulgate regulations regarding—

“(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

“(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.”

§ 1710. Public-private competition required before conversion to contractor performance

(a) PUBLIC-PRIVATE COMPETITION.—

(1) WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS ALLOWED.—A function of an executive agency performed by 10 or more agency civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by agency civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the executive agency with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by agency civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Federal Government over the life of the contract, including—

(i) the estimated cost to the Federal Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Federal Government for performance of the function by agency civilian employees; and

(iii) an estimate of all other costs and expenditures that the Federal Government would incur because of the award of the contract;

(F) requires continued performance of the function by agency civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by agency civilian employees would, over all

performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) \$10,000,000; and

(G) examines the effect of performance of the function by a contractor on the agency mission associated with the performance of the function.

(2) NOT A NEW REQUIREMENT.—A function that is performed by the executive agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) PROHIBITIONS.—In no case may a function being performed by executive agency personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(b) CONSULTING WITH AFFECTED EMPLOYEES OR THEIR REPRESENTATIVES.—

(1) CONSULTING WITH AFFECTED EMPLOYEES.—Each civilian employee of an executive agency responsible for determining under Office of Management and Budget Circular A76 whether to convert to contractor performance any function of the executive agency—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of the employees on the development and preparation of that statement and that study; and

(B) may consult with the employees on other matters relating to that determination.

(2) CONSULTING WITH REPRESENTATIVES.—

(A) EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) EMPLOYEES NOT REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) REGULATIONS.—The head of each executive agency shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—

(1) REPORT.—Before commencing a public-private competition under subsection (a), the head of an executive agency shall submit to Congress a report containing the following:

(A) The function for which the public-private competition is to be conducted.

(B) The location at which the function is performed by agency civilian employees.

(C) The number of agency civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of an executive agency to impose predetermined constraints or limitations on agency civilian employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) EXAMINATION OF POTENTIAL ECONOMIC EFFECT.—The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) agency civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Federal Government, if more than 50 agency civilian employees perform the function.

(3) OBJECTIONS TO PUBLIC-PRIVATE COMPETITION.—

(A) GROUNDS.—A representative individual or entity at a facility where a public-private competition is conducted may submit to the head of the executive agency an objection to the public-private competition on the grounds that—

(i) the report required by paragraph (1) has not been submitted; or

(ii) the certification required by paragraph (1)(E) was not included in the report required by paragraph (1).

(B) DEADLINES.—The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(C) REPORT AND CERTIFICATION REQUIRED BEFORE SOLICITATION OR AWARD OF CONTRACT.—If the head of the executive agency determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted

for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY DISABLED PEOPLE.—This section shall not apply to a commercial or industrial type function of an executive agency that is—

(1) included on the procurement list established pursuant to section 8503 of this title; or

(2) planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled people in accordance with chapter 85 of this title.

(e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3715.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1710	41:439.	Pub. L. 93-400, §43, as added Pub. L. 110-181, title III, §327(a), Jan. 28, 2008, 122 Stat. 63.

In the heading for subsection (d) and in subsection (d)(2), the words “disabled people” are substituted for “handicapped persons” for consistency with chapter 85 of the revised title.

§ 1711. Value engineering

Each executive agency shall establish and maintain cost-effective procedures and processes for analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of the agency. The analysis shall be—

(1) performed by qualified agency or contractor personnel; and

(2) directed at improving performance, reliability, quality, safety, and life cycle costs.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3718.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1711	41:432.	Pub. L. 93-400, §36, as added Pub. L. 104-106, title XLIII, §4306(a), Feb. 10, 1996, 110 Stat. 665.

§ 1712. Record requirements

(a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall establish and maintain for 5 years a computer file, by fiscal year, containing unclassified records of all procurements greater than the simplified acquisition threshold in that fiscal year.

(b) CONTENTS.—The record established under subsection (a) shall include, with respect to each procurement carried out using—