

**§ 1903. Special emergency procurement authority**

(a) **APPLICABILITY.**—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101(a) of title 10); or

(2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

(b) **INCREASED THRESHOLDS AND LIMITATION.**—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) \$15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term “simplified acquisition threshold” means—

(A) \$250,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) \$1,000,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the \$5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 2304(g)(1)(B) of title 10 is deemed to be \$10,000,000.

(c) **AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL ITEM.**—

(1) **IN GENERAL.**—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial item for the purpose of carrying out the procurement.

(2) **CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.**—A contract in an amount of more than \$15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and section 2306a of title 10.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3721.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1903(a) .....	41:428a(a), (e).	Pub. L. 93–400, § 32A, as added Pub. L. 108–136, title XIV, § 1443(a)(1), Nov. 24, 2003, 117 Stat. 1675; Pub. L. 108–375, title VIII, § 822, Oct. 28, 2004, 118 Stat. 2016.
1903(b) .....	41:428a(b), (c).	
1903(c) .....	41:428a(d).	

**§ 1904. Certain transactions for defense against attack**

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—The head of an executive agency that engages in basic research, applied research, advanced research, and development projects that are necessary to the responsibilities of the executive agency in the field of research and development and have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack may exercise the same authority (subject to the same restrictions and conditions) with respect to the research and projects as the Secretary of Defense may exercise under section 2371 of title 10, except for subsections (b) and (f) of section 2371.

(2) **PROTOTYPE PROJECTS.**—The head of an executive agency, under the authority of paragraph (1), may carry out prototype projects that meet the requirements of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under section 845(a) of that Act and that the period of authority to carry out projects under section 845(a) of that Act terminates as provided in section 845(i) of that Act.

(3) **APPLICATION OF REQUIREMENTS AND CONDITIONS.**—In applying the requirements and conditions of section 845 of that Act under this subsection—

(A) section 845(c) of that Act shall apply with respect to prototype projects carried out under paragraph (2); and

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under section 845(d) of that Act.

(4) **APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.**—

(A) **OFFICE OF MANAGEMENT AND BUDGET.**—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) **DEPARTMENT OF HOMELAND SECURITY.**—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) **REGULATIONS.**—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) **ANNUAL REPORT.**—The annual report of the head of an executive agency that is required under section 2371(h) of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) **TERMINATION OF AUTHORITY.**—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3721.)

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1904 .....	41:428a note.	Pub. L. 108-136, title XIV, §1441, Nov. 24, 2003, 117 Stat. 1673.

In subsection (a)(2), the reference to subsection (g) of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note) is changed to subsection (i) because of section 847(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1554), which redesignated subsection (g) as subsection (h), and section 823(2) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163, 119 Stat. 3387), which redesignated subsection (h) as subsection (i).

In subsection (a)(3)(A), the words “paragraph (2)” are substituted for “this paragraph” to correct the cross-reference.

In subsection (a)(4)(A), the words “to use the authority for such project” are omitted as unnecessary.

In subsection (c), the words “Committee on Homeland Security and Governmental Affairs” are substituted for “Committee on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Reform” on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

#### § 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Fed-

eral Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3722.)

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1905(a) .....	no source.	Pub. L. 93-400, §33, as added Pub. L. 103-355, title IV, §4101, Oct. 13, 1994, 108 Stat. 3339.
1905(b)-(d) ..	41:429.	

#### § 1906. List of laws inapplicable to procurements of commercial items

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial items by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial items.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the applicability of the provision.

(c) SUBCONTRACTS.—

(1) DEFINITION.—In this subsection, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under a contract or subcontract for the procurement of commercial items. A provision of law properly