

by, the head of an executive agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, and an actual or prospective offeror requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the executive agency may—

(1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of section 3554 of title 31; and

(2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of section 3554(c).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3773.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 3708(a) | 41:253b(k). | June 30, 1949, ch. 288, title III, §303B(k), formerly §303B(h), as added Pub. L. 103-355, title I, §1065, Oct. 13, 1994, 108 Stat. 3269; redesignated as §303B(k), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645; Pub. L. 104-106, title XLI, §5607(c), Feb. 10, 1996, 110 Stat. 701, as amended Pub. L. 104-201, title X, §1074(b)(7) (less effective date), Sept. 23, 1996, 110 Stat. 2660. |
| 3708(b) | 41:253b(l). | June 30, 1949, ch. 288, title III, §303B(l), formerly §303B(i), as added Pub. L. 103-355, title I, §1066, Oct. 13, 1994, 108 Stat. 3269; redesignated as §303B(l), Pub. L. 104-106, title XLI, §4104(b)(2), Feb. 10, 1996, 110 Stat. 645. |

CHAPTER 39—SPECIFIC TYPES OF CONTRACTS

| Sec. | |
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| 3901. | Contracts awarded using procedures other than sealed-bid procedures. |
| 3902. | Severable services contracts for periods crossing fiscal years. |
| 3903. | Multiyear contracts. |
| 3904. | Contract authority for severable services contracts and multiyear contracts. |
| 3905. | Cost contracts. |
| 3906. | Cost-reimbursement contracts. |

SEPARABILITY

Act June 30, 1949, ch. 288, title VI, §604, formerly title V, §504, 63 Stat. 403, renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583, provided that: “If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.”

SHARE-IN-SAVINGS CONTRACTS

Act June 30, 1949, ch. 288, title III, §317, as added Pub. L. 107-347, title II, §210(b), Dec. 17, 2002, 116 Stat. 2934, provided that:

“(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40, United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

“(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

“(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

“(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

“(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

“(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

“(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

“(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

“(B) Amounts retained by the agency under this subsection shall—

“(i) without further appropriation, remain available until expended; and

“(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

“(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

“(A) appropriations available for the performance of the contract;

“(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

“(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

“(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

“(3)(A) Subject to subparagraph (B), the head of an executive agency may enter into share-in-savings con-

tracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

“(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

“(I) 25 percent of the estimated costs of a cancellation or termination; or

“(II) \$5,000,000.

“(ii) Unfunded contingent liability in excess of \$1,000,000 has been approved by the Director of the Office of Management and Budget or the Director’s designee.

“(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all executive agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

“(C) DEFINITIONS.—In this section:

“(1) The term ‘contractor’ means a private entity that enters into a contract with an agency.

“(2) The term ‘savings’ means—

“(A) monetary savings to an agency; or

“(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

“(3) The term ‘share-in-savings contract’ means a contract under which—

“(A) a contractor provides solutions for—

“(i) improving the agency’s mission-related or administrative processes; or

“(ii) accelerating the achievement of agency missions; and

“(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

“(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

“(ii) acceleration of achievement of agency missions.

“(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.”

EX. ORD. NO. 13496. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Ex. Ord. No. 13496, Jan. 30, 2009, 74 F.R. 6107, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered that:

SECTION 1. *Policy.* This order is designed to promote economy and efficiency in Government procurement. When the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers’ productivity is enhanced when workers are well informed of their rights under Federal labor laws, including the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.* As the Act recognizes, “encouraging the practice and procedure of collective bargaining and . . . protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection” will “eliminate the causes of certain substantial obstructions to the free flow of commerce” and “mitigate and eliminate these obstructions when they have oc-

curred.” 29 U.S.C. 151. Relying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government’s contracts.

SEC. 2. *Contract Clause.* Except in contracts exempted in accordance with section 3 of this order, all Government contracting departments and agencies shall, to the extent consistent with law, include the following provisions in every Government contract, other than collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and purchases under the simplified acquisition threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403.

“1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The notice shall include the information contained in the notice published by the Secretary of Labor in the Federal Register (Secretary’s Notice).

“2. The contractor will comply with all provisions of the Secretary’s Notice, and related rules, regulations, and orders of the Secretary of Labor.

“3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]]. Such other sanctions or remedies may be imposed as are provided in Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]], or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

“4. The contractor will include the provisions of paragraphs (1) through (3) above in every subcontract entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order [number as provided by the Federal Register [13496]] of [insert new date [Jan. 30, 2009]]) so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, that if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

SEC. 3. *Administration.*

(a) The Secretary of Labor (Secretary) shall be responsible for the administration and enforcement of this order. The Secretary shall adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order.

(b) Within 120 days of the effective date of this order, the Secretary shall initiate a rulemaking to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of this order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of this order.

(c) Whenever the Secretary finds that an act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions set out in subsection (a) of this section necessary to achieve the purposes of this order, the Secretary

promptly shall issue such rules, regulations, or orders as are needed to cause the substitution or addition of appropriate contractual provisions in Government contracts thereafter entered into.

SEC. 4. Exemptions. (a) If the Secretary finds that the application of any of the requirements of this order would not serve the purposes of this order or would impair the ability of the Government to procure goods or services on an economical and efficient basis, the Secretary may exempt a contracting department or agency or group of departments or agencies from the requirements of any or all of the provisions of this order with respect to a particular contract or subcontract or any class of contracts or subcontracts.

(b) The Secretary may, if the Secretary finds that special circumstances require an exemption in order to serve the national interest, exempt a contracting department or agency from the requirements of any or all of the provisions of section 2 of this order with respect to a particular contract or subcontract or class of contracts or subcontracts.

SEC. 5. Investigation.

(a) The Secretary may investigate any Government contractor, subcontractor, or vendor to determine whether the contractual provisions required by section 2 of this order have been violated.

Such investigations shall be conducted in accordance with procedures established by the Secretary.

(b) The Secretary shall receive and investigate complaints by employees of a Government contractor or subcontractor, where such complaints allege a failure to perform or a violation of the contractual provisions required by section 2 of this order.

SEC. 6. Compliance.

(a) The Secretary, or any agency or officer in the executive branch lawfully designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, regarding compliance with this order as the Secretary may deem advisable.

(b) The Secretary may hold hearings, or cause hearings to be held, in accordance with subsection (a) of this section, prior to imposing, ordering, or recommending the imposition of sanctions under this order. Neither an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under section 7(b) of this order nor the inclusion of a contractor on a published list of noncomplying contractors under section 7(c) of this order shall be carried out without affording the contractor an opportunity for a hearing.

SEC. 7. Remedies. In accordance with such rules, regulations, or orders as the Secretary may issue or adopt, the Secretary may:

(a) after consulting with the contracting department or agency, direct that department or agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor to comply with the contractual provisions required by section 2 of this order; contracts may be cancelled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon future compliance: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of the contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that completion of the contract is essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of the contracting department or agency, or his or her designee, continues to object to the issuance of such directive;

(b) after consulting with each affected contracting department or agency, provide that one or more contracting departments or agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any non-complying contractor, until such contractor has sat-

isfied the Secretary that such contractor has complied with and will carry out the provisions of this order: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of each contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that further contracts or extensions or other modifications of existing contracts with the noncomplying contractor are essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of a contracting department or agency, or his or her designee, continues to object to the issuance of such directive; and

(c) publish, or cause to be published, the names of contractors that have, in the judgment of the Secretary, failed to comply with the provisions of this order or of related rules, regulations, and orders of the Secretary.

SEC. 8. Reports. Whenever the Secretary invokes section 7(a) or 7(b) of this order, the contracting department or agency shall report to the Secretary the results of the action it has taken within such time as the Secretary shall specify.

SEC. 9. Cooperation. Each contracting department and agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions under this order.

SEC. 10. Sufficiency of Remedies. If the Secretary finds that the authority vested in the Secretary by sections 5 through 9 of this order is not sufficient to effectuate the purposes of this order, the Secretary shall develop recommendations on how better to effectuate those purposes.

SEC. 11. Delegation. The Secretary may, in accordance with law, delegate any function or duty of the Secretary under this order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

SEC. 12. Implementation. To the extent permitted by law, the Federal Acquisition Regulatory Council (FAR Council) shall take whatever action is required to implement in the Federal Acquisition Regulation (FAR) the provisions of this order and any related rules, regulations, or orders issued by the Secretary under this order and shall amend the FAR to require each solicitation of offers for a contract to include a provision that implements section 2 of this order.

SEC. 13. Revocation of Prior Order and Actions. Executive Order 13201 of February 17, 2001, is revoked. The heads of executive departments and agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13201.

SEC. 14. Severability. If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 15. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 16. *Effective Date.* This order shall become effective immediately, and shall apply to contracts resulting from solicitations issued on or after the effective date of the rule promulgated by the Secretary pursuant to section 3(b) of this order.

BARACK OBAMA.

EX. ORD. NO. 13502. USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

Ex. Ord. No. 13502, Feb. 6, 2009, 74 F.R. 6985, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

SECTION 1. *Policy.* (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

SEC. 2. *Definitions.*

(a) The term “labor organization” as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term “construction” as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term “large-scale construction project” as used in this order means a construction project where the total cost to the Federal Government is \$25 million or more.

(d) The term “executive agency” as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term “project labor agreement” as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

SEC. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government’s interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

SEC. 4. Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, and Executive Orders.

SEC. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

SEC. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

SEC. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economic, efficient, and timely completion of such projects.

SEC. 8. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

SEC. 9. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. *General.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 11. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

BARACK OBAMA.

§ 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) REQUIRED WARRANTY.—

(1) CONTENT.—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) REMEDY FOR BREACH OR VIOLATION.—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) NONAPPLICATION.—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 3901 | 41:254(a). | June 30, 1949, ch. 288, title III, § 304(a), 63 Stat. 395; Pub. L. 98–369, div. B, title VII, § 2714(a)(3)(A), (B), July 18, 1984, 98 Stat. 1184; Pub. L. 103–355, title IV, § 4103(c), title VIII, § 8204(b), Oct. 13, 1994, 108 Stat. 3341, 3396. |

In subsection (b)(2), the words “in its discretion” are omitted as unnecessary.

§ 3902. Severable services contracts for periods crossing fiscal years

(a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 3902 | 41:253l. | June 30, 1949, ch. 288, title III, § 303L, as added Pub. L. 103–355, title I, § 1073, Oct. 13, 1994, 108 Stat. 3271, as amended Pub. L. 104–106, title XLIII, § 4321(a)(1), Feb. 10, 1996, 110 Stat. 671. |

§ 3903. Multiyear contracts

(a) DEFINITION.—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency’s programs.

(c) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of the contract in a fiscal year covered by the contract. Funds available for paying termination costs shall remain available for that purpose until the costs associated with termination of the contract are paid.

(d) CANCELLATION CEILING NOTICE.—Before a contract described in subsection (b) that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to Congress. The contract may not be awarded until the end of the 30-day period beginning on the date of the notification.

(e) CONTINGENCY CLAUSE FOR APPROPRIATION OF FUNDS.—A multiyear contract may provide that performance under the contract after the first year of the contract is contingent on the appropriation of funds and (if the contract does so provide) that a cancellation payment shall be made to the contractor if the funds are not appropriated.

(f) OTHER LAW NOT AFFECTED.—This section does not modify or affect any other provision of law that authorizes multiyear contracts.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3774.)