

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.)