

to be “excellent” or “superior” and the percentage of the available award fee which contractors should be paid for the performance;

(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be “acceptable”, “average”, “expected”, “good”, or “satisfactory”;

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the Federal Government;

(8) ensure that each executive agency—

(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate the data on a regular basis;

(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

(d) GUIDANCE FOR DEPARTMENT OF DEFENSE.—The Department of Defense shall continue to be subject to guidance on award and incentive fees issued by the Secretary of Defense pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364, 10 U.S.C. 2302 note).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3800.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 4711, 41:251 note, Pub. L. 110-417, [div. A], title VIII, §867, Oct. 14, 2008, 122 Stat. 4551.

In subsection (b), the words “Not later than 1 year after the date of the enactment of this Act” are omitted because of section 6(f) of the bill. The words “shall provide” are substituted for “shall be amended to provide” to reflect the permanence of the provision.

Subtitle II—Other Advertising and Contract Provisions

Chapter 61. Advertising 6101
63. General Contract Provisions 6301
65. Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$10,000 6501
67. Service Contract Labor Standards 6701

CHAPTER 61—ADVERTISING

Sec. 6101. Advertising requirement for Federal Government purchases and sales.

Sec. 6102. Exceptions from advertising requirement.
6103. Opening of bids.

§ 6101. Advertising requirement for Federal Government purchases and sales

(a) DEFINITIONS.—In this section—

(1) APPROPRIATION.—The term “appropriation” includes amounts made available by legislation under section 9104 of title 31.

(2) FEDERAL GOVERNMENT.—The term “Federal Government” includes the government of the District of Columbia.

(b) PURCHASES.—

(1) IN GENERAL.—Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Federal Government may be made or entered into only after advertising for proposals for a sufficient time.

(2) LIMITATIONS ON APPLICABILITY.—Paragraph (1) does not apply when—

(A) the amount involved in any one case does not exceed \$25,000;

(B) public exigencies require the immediate delivery of articles or performance of services;

(C) only one source of supply is available and the Federal Government purchasing or contracting officer so certifies; or

(D) services are required to be performed by a contractor in person and are—

(i) of a technical and professional nature; or

(ii) under Federal Government supervision and paid for on a time basis.

(c) SALES.—Except when otherwise authorized by law or when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Federal Government are governed by the requirements of this section for advertising.

(d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—For wholly owned Government corporations, this section applies only to administrative transactions.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3801.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 6101(a), 41:5a, Aug. 2, 1946, ch. 744, §18, 60 Stat. 811. Row 2: 6101(b)-(d), 41:5, R.S. §3709; Aug. 2, 1946, ch. 744, §9(a), (c), 60 Stat. 809; June 30, 1949, ch. 288, title VI, §602(f), formerly title V, §502(e), 63 Stat. 403, renumbered title VI, §602(f), Sept. 5, 1950, ch. 849, §§6(a), (b), 8(c), 64 Stat. 583, 591; Pub. L. 85-800, §7, Aug. 28, 1958, 72 Stat. 967; Pub. L. 93-356, §1, July 25, 1974, 88 Stat. 390; Pub. L. 98-191, §9(b), Dec. 1, 1983, 97 Stat. 1332.

In subsection (a), before paragraph (1), the words “In this section” are substituted for “as used in this Act” as the probable intent of Congress. Section 9(a) of the Act of August 2, 1946 (ch. 744, 60 Stat. 809) restated 41:5 generally and section 9(c) of the Act, an independent provision, was editorially added as the last paragraph of 41:5. The definitions which apply to “as used in this Act” are probably intended to apply also to 41:5 as re-

stated by the Act. The definitions for “department” and “continental United States” are omitted because those terms do not appear in 41:5. In paragraph (1), the words “section 9104 of title 31” are substituted for “section 104 of the Government Corporation Control Act, approved December 6, 1945” because of section 4(b) of Public Law. 97-258 (31 U.S.C. note prec. 101). In paragraphs (1) and (2), the word “includes” is substituted for “shall be construed to include” and for “shall be construed as including”, respectively, to eliminate unnecessary words.

In subsection (c), the words “as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638)” in section 3709 of the Revised Statutes are omitted because section 29 was repealed by section 602(a)(1) of the Federal Property and Administrative Services Act of 1949 (ch. 288, 63 Stat. 399).

§ 6102. Exceptions from advertising requirement

(a) AMERICAN BATTLE MONUMENTS COMMISSION.—Section 6101 of this title does not apply to the American Battle Monuments Commission with respect to leases in foreign countries for office or garage space.

(b) BUREAU OF INTERPARLIAMENTARY UNION FOR PROMOTION OF INTERNATIONAL ARBITRATION.—Section 6101 of this title does not apply to the Bureau of Interparliamentary Union for Promotion of International Arbitration with respect to necessary stenographic reporting services by contract.

(c) DEPARTMENT OF STATE.—Section 6101 of this title does not apply to the Department of State when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section 6101 of this title does not apply to the International Committee of Aerial Legal Experts with respect to necessary stenographic and other services by contract.

(e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market according to common business practice, without compliance with section 6101 of this title, when the aggregate amount of the purchase or the service does not exceed \$25,000 in any instance.

(f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and other forest products produced by Indian enterprises from forests on Indian reservations may be sold under regulations the Secretary of the Interior prescribes, without compliance with section 6101 of this title.

(g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not apply to purchases and contracts for supplies or services for any office of the House of Representatives.

(h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congressional Budget Office may enter into agreements or contracts without regard to section 6101 of this title.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3802.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6102(a)	41:6a(a).	Oct. 10, 1940, ch. 851, §2(a), 54 Stat. 1110; Oct. 31, 1951, ch. 654, §3(8), 65 Stat. 708.
6102(b)	41:6a(f).	Oct. 10, 1940, ch. 851, §2(f), (j), 54 Stat. 1110.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6102(c)	41:6a(h).	Oct. 10, 1940, ch. 851, §2(h), 54 Stat. 1110; Oct. 31, 1951, ch. 654, §3(9), 65 Stat. 708.
6102(d)	41:6a(j).	Pub. L. 89-90, (2d par. on p. 276), July 27, 1965, 79 Stat. 276; Pub. L. 93-356, §2, July 25, 1974, 88 Stat. 390; Pub. L. 98-191, §9(c), Dec. 1, 1983, 97 Stat. 1332.
6102(e)	41:6a-1.	
6102(f)	41:6b(d).	June 24, 1940, ch. 412, 54 Stat. 504.
6102(g)	41:6a-3.	Pub. L. 108-7, div. H, title I, §§104, 1102, Feb. 20, 2003, 117 Stat. 354, 370.
6102(h)	41:6a-4.	

In subsections (a)–(d), the words “under any appropriation Act” are omitted as unnecessary.

In subsection (e), the words “On and after July 27, 1965” are omitted as unnecessary. The words “according to common business practice” are substituted for “in the manner common among businessmen” for consistency in the revised title.

In subsection (g), the words “in any fiscal year” are omitted as unnecessary.

In subsection (h), the text of 41:6a-4(b) is omitted as unnecessary.

§ 6103. Opening of bids

Whenever proposals for supplies have been solicited, the parties responding to the solicitation shall be notified of the time and place of the opening of the bids, and be permitted to be present either in person or by attorney. A record of each bid shall be made at the time and place of the opening of the bids.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3803.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6103	41:8.	R.S. §3710.

CHAPTER 63—GENERAL CONTRACT PROVISIONS

- Sec. 6301. Authorization requirement.
- 6302. Contracts for fuel made by Secretary of the Army.
- 6303. Certain contracts limited to appropriated amounts.
- 6304. Certain contracts limited to one-year term.
- 6305. Prohibition on transfer of contract and certain allowable assignments.
- 6306. Prohibition on Members of Congress making contracts with Federal Government.
- 6307. Contracts with Federal Government-owned establishments and availability of appropriations.
- 6308. Contracts for transportation of Federal Government securities.
- 6309. Honorable discharge certificate in lieu of birth certificate.

§ 6301. Authorization requirement

(a) IN GENERAL.—A contract or purchase on behalf of the Federal Government shall not be made unless the contract or purchase is authorized by law or is under an appropriation adequate to its fulfillment.

(b) EXCEPTION.—

(1) DEFINITION.—In this subsection, the term “defined Secretary” means—