

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-