

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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 con-

tract 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.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3903(a) .....	41:254c(d) (1st sentence).	June 30, 1949, ch. 288, title III, §304B, as added Pub. L. 103-355, title I, §1072, Oct. 13, 1994, 108 Stat. 3270.
3903(b) .....	41:254c(a).	
3903(c) .....	41:254c(b).	
3903(d) .....	41:254c(c).	
3903(e) .....	41:254c(d) (last sentence).	
3903(f) .....	41:254c(e).	

### § 3904. Contract authority for severable services contracts and multiyear contracts

(a) **COMPTROLLER GENERAL.**—The Comptroller General may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and nonaudit-related services to the same extent as executive agencies under sections 3902 and 3903 of this title.

(b) **LIBRARY OF CONGRESS.**—The Library of Congress may use available funds to enter into contracts for the lease or procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and services pursuant to sections 3902 and 3903 of this title.

(c) **CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.**—The Chief Administrative Officer of the House of Representatives may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to

the same extent as executive agencies under the authority of section 3903 of this title.

(d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and may enter into multiyear contracts for the acquisition of property and services to the same extent as executive agencies under the authority of sections 3902 and 3903 of this title.

(e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE.—Subject to regulations prescribed by the Committee on Rules and Administration of the Senate, the Secretary and the Sergeant at Arms and Doorkeeper of the Senate may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent and under the same conditions as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services to the same extent and under the same conditions as executive agencies under the authority of section 3903 of this title.

(f) CAPITOL POLICE.—The United States Capitol Police may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of the Smithsonian Institution may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services under the authority of section 3903 of this title.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3775.)

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3904(b) .....	41:2531-2.	Pub. L. 106-57, title II, §207, Sept. 29, 1999, 113 Stat. 423.
3904(c) .....	41:2531-3.	Pub. L. 106-554, §1(a)(2) [title I, §§101, 110], Dec. 21, 2000, 114 Stat. 2763A-100, 2763A-108.
3904(d) .....	41:2531-4.	Pub. L. 108-7, div. H, title I, §§5, 1002, 1202, Feb. 20, 2003, 117 Stat. 350, 357, 373.
3904(e) .....	41:2531-5.	
3904(f) .....	41:2531-6.	Pub. L. 108-72, §4, Aug. 15, 2003, 117 Stat. 889.
3904(g) .....	41:2531-7.	
3904(h) .....	41:2531-8.	

In subsections (a)–(c) and (e)–(h), the words “procurement of severable services” are substituted for “acquisition of severable services” for consistency with 41:2531, restated as section 3902 of the revised title.

In subsection (c), the words “During fiscal year 2001 and any succeeding fiscal year” are omitted as obsolete.

In subsection (d), the words “Beginning on December 21, 2000, and hereafter” are omitted as obsolete.

In subsection (e), the text of 41:2531-5(b) is omitted as obsolete.

In subsection (f), the text of 41:2531-6(b) is omitted as obsolete.

In subsection (g), the text of 41:2531-7(b) is omitted as obsolete.

In subsection (h), the text of 41:2531-8(b) is omitted as obsolete.

§ 3905. Cost contracts

(a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the estimated cost of the contract, not including the fee, as determined by the agency head at the time of entering into the contract.

(2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The fee in a cost-plus-a-fixed-fee contract for experimental, developmental, or research work shall not exceed 15 percent of the estimated cost of the contract, not including the fee.

(3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a cost-plus-a-fixed-fee contract for architectural or engineering services relating to any public works or utility project may include the contractor’s costs and shall not exceed 6 percent of the estimated cost, not including the fee, as determined by the agency head at the time of entering into the contract, of the project to which the fee applies.

(c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either the simplified acquisition threshold or 5 percent of the total estimated cost of the prime contract.

(d) RIGHT TO AUDIT.—A procuring agency, through any authorized representative thereof, has the right to inspect the plans and to audit the books and records of a prime contractor or

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3904(a) .....	41:2531-1.	Pub. L. 105-18, title II, §7004, June 12, 1997, 111 Stat. 192.