

L. 101-510, div. A, title VIII, §§811, 832, title XIII, §§1302(d), 1312(b), Nov. 5, 1990, 104 Stat. 1596, 1612, 1669, 1670; Pub. L. 102-25, title VII, §§704(a)(6), 705(e), Apr. 6, 1991, 105 Stat. 118, 120, which set contract goals for small disadvantaged businesses and certain institutions of higher education, was repealed and restated in section 2323 of this title by Pub. L. 102-484, §801(a)(1)(B), (h)(1).

#### MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99-145, title IX, §913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101-510, div. A, title XIII, §1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

“(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

“(b) DEFINITION.—For the purposes of this section, the term ‘competitive procurements’ means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code.”

#### DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Pub. L. 98-525, title XII, §1202, Oct. 19, 1984, 98 Stat. 2588, as amended by Pub. L. 99-500, §101(c) [title X, §953(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-172, and Pub. L. 99-591, §101(c) [title X, §953(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-172; Pub. L. 99-661, div. A, title IX, formerly title IV, §953(c), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

“(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

“(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

“(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

“(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

“(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.”

#### MODIFICATION OF REGULATIONS AND DIRECTIVES TO ACCOMMODATE A POLICY OF MULTIYEAR PROCUREMENT

Pub. L. 97-86, title IX, §909(d), Dec. 1, 1981, 95 Stat. 1120, directed Secretary of Defense, not later than the end of the 90-day period beginning Dec. 1, 1981, to issue such modifications to existing regulations governing defense acquisitions as might be necessary to implement the amendments made by subsections (a), (b), and (c) [amending sections 139, 2301, and 2306 of this title] and directed Director of the Office of Management and Budget to issue such modifications to existing Office of Management and Budget directives as might be necessary to take into account the amendments made by subsections (a) and (b) [amending sections 2301 and 2306 of this title].

#### PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93-365, title VII, §707, Aug. 5, 1974, 88 Stat. 406, which prohibited contracts by the Department of Defense for other than American goods after Aug. 5, 1974, unless adequate consideration was first given to bids of firms in labor surplus areas of the United States, of small business firms, and of all other United States firms which had offered to furnish American goods, balance of payments, cost of shipping other than American goods, and any duty, tariff, or surcharge on such goods, was repealed and restated in section 2501 of this title by Pub. L. 100-370, §3(a), (c). Section 2501 of this title was renumbered section 2506 by Pub. L. 100-456, §821(b)(1)(A). Section 2506 of this title was renumbered section 2533 by Pub. L. 102-484, §4202(a).

#### § 2302a. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisition threshold is as specified in section 134 of title 41.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of title 41 shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103-355, title IV, §§4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340; Pub. L. 111-350, §5(b)(9), Jan. 4, 2011, 124 Stat. 3843.)

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350, §5(b)(9)(A), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act”.

Subsec. (b). Pub. L. 111-350, §5(b)(9)(B), substituted “section 1905 of title 41” for “section 33 of the Office of Federal Procurement Policy Act”.

1994—Subsec. (b). Pub. L. 103-355, §4102(a), added subsec. (b).

#### EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

#### § 2302b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of title 41 shall apply as provided in such section to the agencies named in section 2303(a) of this title.

(Added Pub. L. 103-355, title IV, §4203(a)(1), Oct. 13, 1994, 108 Stat. 3345; amended Pub. L. 111-350, §5(b)(10), Jan. 4, 2011, 124 Stat. 3843.)

#### AMENDMENTS

2011—Pub. L. 111-350 substituted “section 1901 of title 41” for “section 31 of the Office of Federal Procurement Policy Act”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

**§ 2302c. Implementation of electronic commerce capability**

(a) IMPLEMENTATION OF ELECTRONIC COMMERCE CAPABILITY.—(1) The head of each agency named in paragraphs (1), (5), and (6) of section 2303(a) of this title shall implement the electronic commerce capability required by section 2301 of title 41.

(2) The Secretary of Defense shall act through the Under Secretary of Defense for Acquisition, Technology, and Logistics to implement the capability within the Department of Defense.

(3) In implementing the electronic commerce capability pursuant to paragraph (1), the head of an agency referred to in paragraph (1) shall consult with the Administrator for Federal Procurement Policy.

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303(a) of this title shall designate a program manager to implement the electronic commerce capability for that agency. The program manager shall report directly to an official at a level not lower than the senior procurement executive designated for the agency under section 1702(c) of title 41.

(Added Pub. L. 103-355, title IX, §9002(a), Oct. 13, 1994, 108 Stat. 3402; amended Pub. L. 105-85, div. A, title VIII, §850(f)(3)(A), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 105-129, §1(a)(1), Dec. 1, 1997, 111 Stat. 2551; Pub. L. 106-65, div. A, title X, §1066(a)(18), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107-107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 109-364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111-350, §5(b)(11), Jan. 4, 2011, 124 Stat. 3843.)

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111-350, §5(b)(11)(A), substituted “section 2301 of title 41” for “section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426)”.

Subsec. (b). Pub. L. 111-350, §5(b)(11)(B), substituted “section 1702(c) of title 41” for “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))”.

2006—Subsec. (b). Pub. L. 109-364 substituted “section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))” for “section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))”.

2001—Subsec. (a)(2). Pub. L. 107-107 substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

1999—Subsec. (b). Pub. L. 106-65 substituted “section 2303(a)” for “section 2303”.

1997—Pub. L. 105-85 substituted “electronic commerce” for “FACNET” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each agency named in section 2303 of this title shall implement the Federal acquisition computer network (“FACNET”) capability required by section 30 of the Office of Federal Procurement Policy Act. In the case of the Department of Defense, the implementation shall be by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, for the Department of Defense as a whole. For purposes of this section, the term ‘head of an agency’ does not include the Secretaries of the military departments.

“(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an agency shall con-

sult with the Administrator for Federal Procurement Policy.

“(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303 of this title shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).”

Subsec. (a)(1). Pub. L. 105-129 inserted “of section 2303(a) of this title” after “paragraphs (1), (5), and (6)”.

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105-129, §1(a)(2), Dec. 1, 1997, 111 Stat. 2551, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment to section 2302c of title 10, United States Code, made by section 850(f)(3)(A) of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105-85] to which the amendment made by paragraph (1) relates.”

Pub. L. 105-85, div. A, title VIII, §850(g), Nov. 18, 1997, 111 Stat. 1850, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 2304 of this title, section 637 of Title 15, Commerce and Trade, section 1501 of former Title 40, Public Buildings, Property, and Works, and sections 252c, 253, 416, 426, and 427 of Title 41, Public Contracts, repealing section 426a of Title 41, amending provisions set out as a note under section 413 of Title 41, and repealing provisions set out as a note under section 426a of Title 41] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

“(2) The repeal made by subsection (c) of this section [repealing provisions set out as a note under section 426a of Title 41] shall take effect on the date of the enactment of this Act.”

EFFECTIVE DATE

Pub. L. 103-355, title IX, §9002(c), Oct. 13, 1994, 108 Stat. 3402, provided that: “A FACNET capability may be implemented and used in an agency before the promulgation of regulations implementing this section (as provided in section 10002) [108 Stat. 3404, formerly set out as a Regulations note under section 251 of former Title 41, Public Contracts]. If such implementation and use occurs, the period for submission of bids or proposals under section 18(a)(3)(B) of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1708(e)(1)(B)], in the case of a solicitation through FACNET, may be less than the period otherwise applicable under that section, but shall be at least 10 days. The preceding sentence shall not be in effect after September 30, 1995.”

**§ 2302d. Major system: definitional threshold amounts**

(a) DEPARTMENT OF DEFENSE SYSTEMS.—For purposes of section 2302(5) of this title, a system for which the Department of Defense is responsible shall be considered a major system if—

(1) the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$115,000,000 (based on fiscal year 1990 constant dollars); or

(2) the eventual total expenditure for procurement for the system is estimated to be more than \$540,000,000 (based on fiscal year 1990 constant dollars).

(b) CIVILIAN AGENCY SYSTEMS.—For purposes of section 2302(5) of this title, a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—