

address of the officer or employee of the Federal Government designated to receive the comments.

(d) **WAIVER.**—The requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable.

(e) **EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.**—

(1) **TEMPORARY BASIS.**—A procurement policy, regulation, procedure, or form for which the requirements of subsections (a) and (b) are waived under subsection (d) is effective on a temporary basis if—

(A) a notice of the policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

(2) **FINAL POLICY, REGULATION, PROCEDURE, OR FORM.**—After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under subsection (d) may issue the final procurement policy, regulation, procedure, or form.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3710.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1707	41:18b.	Pub. L. 93-400, § 22, as added Pub. L. 98-577, title III, § 302(a), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 103-355, title V, § 5092, Oct. 13, 1994, 108 Stat. 3362, as amended Pub. L. 104-106, title XLIII, § 4321(a)(9), Feb. 10, 1996, 110 Stat. 671.

In subsection (a)(2), the words “Notwithstanding the preceding sentence” are omitted as unnecessary.

§ 1708. Procurement notice

(a) **NOTICE REQUIREMENT.**—Except as provided in subsection (b)—

(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);

(2) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(B) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement; and

(3) an executive agency awarding a contract for property or services for a price exceeding \$25,000, or placing an order exceeding \$25,000 under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish

for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) **EXEMPTIONS.**—

(1) **IN GENERAL.**—A notice is not required under subsection (a) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency’s needs and disclosure would compromise national security;

(C) the proposed procurement would result from acceptance of—

(i) an unsolicited proposal that demonstrates a unique and innovative research concept and publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act (15 U.S.C. 638);

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) **CERTAIN PROCUREMENTS.**—The requirements of subsection (a)(2) do not apply to a procurement—

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10; or

(B) for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(3) **IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.**—Paragraph (1)(A) shall be implemented in a manner consistent with applicable international agreements.

(c) CONTENTS OF NOTICE.—Each notice of solicitation required by paragraph (1) or (2) of subsection (a) shall include—

(1) an accurate description of the property or services to be contracted for, which description—

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A)(i) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and

(ii) identify the source in the Federal Government, if any, from which the technical data may be obtained; and

(B)(i) state whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and

(ii) if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of those procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial items using special simplified procedures—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.—A notice of solicitation, award, or order required to be published under subsection (a) shall be published by electronic means. The notice must be electronically accessible in a form that allows convenient and universal user access through the single Government-wide point of entry designated in the Federal Acquisition Regulation.

(e) TIME LIMITATIONS.—

(1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency required by subsection (a)(2) to publish a notice of solicitation may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)(2) that—

(i) in the case of a solicitation for research and development, is earlier than 45 days after the date the notice required for a bid or proposal for a contract described in subsection (a)(2)(A) is published;

(ii) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than 30 days after the date the notice required for an order described in subsection (a)(2)(B) is published; or

(iii) in any other case, is earlier than 30 days after the date the solicitation is issued.

(2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.—An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation for which a deadline is not provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (1) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial items.

(f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under subsection (a)(1) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.—An executive agency shall make available to a business concern, or the authorized representative of a concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of the package.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3711; Pub. L. 115-232, div. A, title VIII, §836(b)(3), Aug. 13, 2018, 132 Stat. 1861.)

AMENDMENT OF SUBSECTIONS (c)(6) AND (e)(3)

Pub. L. 115-232, div. A, title VIII, §836(b)(3), (h), Aug. 13, 2018, 132 Stat. 1861, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, subsections (c)(6) and (e)(3) of this section are amended by striking “commercial items” and inserting “commercial products or commercial services”. See 2018 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1708(a)	41:416(a)(1).	Pub. L. 93-400, §18, as added Pub. L. 98-369, title VII, §2732(a), July 18, 1984, 98 Stat. 1195; Pub. L. 98-577, title III, §303(a), Oct. 30, 1984, 98 Stat. 3077; Pub. L. 99-500, §101(c) [title X, §922(b), (d)(2)], Oct. 18, 1986, 100 Stat. 1783-151, 1783-152; Pub. L. 99-591, §101(c) [title X, §922(b), (d)(2)], Oct. 30, 1986, 100 Stat. 3341-151, 3341-152; Pub. L. 99-661, title IX, formerly title IV, §922(b), (d)(2), Nov. 14, 1986, 100 Stat. 3931, 3932, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101-510, title VIII, §806(d), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103-355, title I, §1055(b)(1), title IV, §§4201(b), (c), 4202(a)-(c), title VIII, §8302, title IX, §9001(b), Oct. 13, 1994, 108 Stat. 3265, 3344, 3398, 3402; Pub. L. 104-106, title XLI, §4101(c), title XLII, §4202(d), title XLIII, §§4310, 4321(h)(3), Feb. 10, 1996, 110 Stat. 642, 654, 670, 675; Pub. L. 105-85, title VIII, §850(e)(2), Nov. 18, 1997, 111 Stat. 1849; Pub. L. 105-261, title X, §1069(d)(1), Oct. 17, 1998, 112 Stat. 2136; Pub. L. 106-398, §1 [div. A], title VIII, §810(a), (b), Oct. 30, 2000, 114 Stat. 1654A-209; Pub. L. 107-296, title VIII, §833(c)(2), Nov. 25, 2002, 116 Stat. 2226.
1708(b)(1), (2).	41:416(c).	
1708(b)(3)	no source.	
1708(c)	41:416(b).	
1708(d)	41:416(a)(2), (7).	
1708(e)	41:416(a)(3), (5), (6).	
1708(f)	41:416(a)(4).	
1708(g)	41:416(d).	

In subsection (a)(3), the words “under a basic agreement, basic ordering agreement, or similar arrangement” are substituted for “referred to in clause (A)(ii)” for clarity. The words “by the Secretary of Commerce” are omitted as obsolete. The Secretary of Commerce no longer has responsibility for publishing notices of awards or orders. See revision note for subsection (d).

In subsection (b)(2), the text of 41 U.S.C. 416(C)(1)(H) is omitted because the procurement authority of the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002 (6 U.S.C. 339(c)) expired on September 30, 2007.

Subsection (b)(3) is added because of section 850(e)(3) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85, 111 Stat. 1849, 15:637 note), which in part provided that the amendments made by section 850(e)(2), which amended 41:416(c)(1), be implemented in a manner consistent with applicable international agreements.

Subsection (d) is substituted for 41:416(a)(2) and (7) to eliminate unnecessary words. Federal Business Opportunities is the designated single point of universal electronic public access for publication of all procurement information and notices previously published by the Secretary of Commerce in the Commerce Business Daily. See 66 Fed. Reg. 27407, May 16, 2001, 68 Fed. Reg. 56678, October 1, 2003, 48 CFR ch. 1, subch. B, part 5, and the special notice posted in CBDNet on December 28, 2001, and printed on January 2, 2002.

In subsection (e)(1)(B)(i), the words “required for a bid or proposal for a contract described in” are substituted for “required by” for clarity.

In subsection (e)(1)(B)(ii), the words “required for an order described in” are substituted for “required by” for clarity.

AMENDMENTS

2018—Subsecs. (c)(6), (e)(3). Pub. L. 115-232 substituted “commercial products or commercial services” for “commercial items”.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

APPLICABILITY TO TENNESSEE VALLEY AUTHORITY

Pub. L. 98-577, title III, §303(c), Oct. 30, 1984, 98 Stat. 3079, provided that: “The provisions of the amendments made by subsection (a) of this section [see Tables for classification] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.”

§ 1709. Contracting functions performed by Federal personnel

(a) COVERED PERSONNEL.—Personnel referred to in subsection (b) are—

- (1) an employee, as defined in section 2105 of title 5;
- (2) a member of the armed forces; and
- (3) an individual assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

(b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—No individual who is not an individual described in subsection (a) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (a) with adequate training and capabilities to perform the evaluations and analyses are not readily available in the agency or another Federal agency. When administering this subsection, the head of each executive agency shall determine in accordance with standards and procedures prescribed in the Federal Acquisition Regulation whether—

- (1) a sufficient number of personnel described in subsection (a) in the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and
- (2) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

(c) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not affect the relationship between the Federal Government and a Federally funded research and development center.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3714.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1709(a)	41:419(b).	Pub. L. 93-400, §23, as added Pub. L. 103-355, title VI, §6002(a), Oct. 13, 1994, 108 Stat. 3363.
1709(b)	41:419(a).	
1709(c)	41:419(c).	

In subsection (a), before paragraph (1), the words “Personnel referred to in subsection (b) are” are sub-