

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2303(a) ..... 2303(b), (c)	no source. 41:405c(a), (c).	Pub. L. 110-417, [div. A], title VIII, §841(a), (c), Oct. 14, 2008, 122 Stat. 4537, 4539.

In this section, the words “relevant acquisition functions” are substituted for “acquisition functions closely associated with inherently governmental functions” because of subsection (a).

In subsection (b), the words “Not later than 270 days after the date of the enactment of this Act” are omitted because of section 6(f) of the bill.

In subsection (b)(4)(A), the words “Except as provided in subparagraph (B)” are omitted as unnecessary.

DEADLINE FOR ISSUANCE OF STANDARD POLICY

Pub. L. 111-350, §6(f)(1), Jan. 4, 2011, 124 Stat. 3854, provided that: “The requirement in section 2303(b)(1) of title 41, United States Code, to issue a policy shall be done not later than 270 days after October 14, 2008.”

REVIEW OF FEDERAL ACQUISITION REGULATION RELATING TO CONFLICTS OF INTEREST

Pub. L. 110-417, [div. A], title VIII, §841(b), Oct. 14, 2008, 122 Stat. 4539, provided that:

“(1) REVIEW.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Administrator for Federal Procurement Policy, in consultation with the Director of the Office of Government Ethics, shall review the Federal Acquisition Regulation to—

“(A) identify contracting methods, types and services that raise heightened concerns for potential personal and organizational conflicts of interest; and

“(B) determine whether revisions to the Federal Acquisition Regulation are necessary to—

“(i) address personal conflicts of interest by contractor employees with respect to functions other than those described in subsection (a) [now 41 U.S.C. 2303(b)]; or

“(ii) achieve sufficiently rigorous, comprehensive, and uniform government-wide policies to prevent and mitigate organizational conflicts of interest in Federal contracting.

“(2) REGULATORY REVISIONS.—If the Administrator determines pursuant to the review under paragraph (1)(B) that revisions to the Federal Acquisition Regulation are necessary, the Administrator shall work with the Federal Acquisition Regulatory Council to prescribe appropriate revisions to the regulations, including the development of appropriate contract clauses.

“(3) REPORT.—Not later than March 1, 2010, the Administrator shall submit to the Committees on Armed Services of the Senate and House of Representatives, the Committee on Homeland Security and Governmental Affairs in the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a report setting forth such findings and determinations under subparagraphs (A) and (B) of paragraph (1), together with an assessment of any revisions to the Federal Acquisition Regulation that may be necessary.”

§ 2304. Conflict of interest standards for consultants

(a) CONTENT OF REGULATIONS.—The Administrator shall prescribe under this division Government-wide regulations that set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) procedures, including registration, certification, and enforcement requirements as may be appropriate, to promote compliance with the standards.

(b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by subsection (a) apply to—

(1) advisory and assistance services provided to the Federal Government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of the services in the regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) other services related to Federal contracts as specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

(c) INTELLIGENCE ACTIVITIES EXEMPTION.—

(1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as defined in section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a).

(2) REPORT.—The Director of National Intelligence shall report to the Intelligence and Appropriations Committees of Congress each January 1, delineating the activities and organizations that have been exempted under paragraph (1).

(d) PRESIDENTIAL DETERMINATION.—Before the regulations required by subsection (a) are prescribed, the President shall determine if prescribing the regulations will have a significantly adverse effect on the accomplishment of the mission of the Defense Department or another Federal agency. If the President determines that the regulations will have such an adverse effect, the President shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for the determination. If such a report is submitted, the requirement for the regulations shall be null and void.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3736.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2304(a) .....	41:405b(a).	Pub. L. 100-463, title VIII, §814, Oct. 1, 1988, 102 Stat. 2270-47.
2304(b) .....	41:405b(b).	
2304(c) .....	41:405b(d).	
2304(d) .....	41:405b(e).	

In this section, the text of 41:405b(c) is omitted as obsolete.

In subsection (a), before paragraph (1), the words “The Administrator shall prescribe under this division Government-wide regulations” are substituted for “Not later than 90 days after October 1, 1988, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter Government-wide regulations shall be issued under the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” to eliminate obsolete words.

In subsection (b), before paragraph (1), the words “the following types of consulting services” are omitted as unnecessary.

In subsection (c)(2), the words “Director of National Intelligence” are substituted for “Director of Central Intelligence” because of section 1081(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458, 50 U.S.C. 401 note). The words “each January 1” are substituted for “no later than January 1, 1990, and annually thereafter to eliminate obsolete and unnecessary words. The words “exempted under paragraph (1)” are substituted for “exempted from the regulations required by subsection (a) of this section in accordance with the provisions of this subsection” to eliminate unnecessary words.

REFERENCES IN TEXT

Executive Order 12333, referred to in subsec. (c)(1), is set out as a note under section 3001 of Title 50, War and National Defense.

**§ 2305. Authority of Director of Office of Management and Budget not affected**

This division does not limit the authorities and responsibilities of the Director of the Office of Management and Budget in effect on December 1, 1983.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)

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<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2305 .....	41:405(h)(2).	Pub. L. 93-400, §6(h)(2), Aug. 30, 1974, 88 Stat. 797; Pub. L. 96-83, §4, Oct. 10, 1979, 93 Stat. 649; Pub. L. 98-191, §5, Dec. 1, 1983, 97 Stat. 1328.

The words “in effect on December 1, 1983” are substituted for “current” for clarity.

**§ 2306. Openness of meetings**

The Administrator by regulation shall require that—

- (1) formal meetings of the Office of Federal Procurement Policy, as designated by the Administrator, for developing procurement policies and regulations be open to the public; and
- (2) public notice of each meeting be given not less than 10 days prior to the meeting.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)

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<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2306 .....	41:412(b).	Pub. L. 93-400, §14(b), Aug. 30, 1974, 88 Stat. 800; Pub. L. 96-83, §9, Oct. 10, 1979, 93 Stat. 652.

**§ 2307. Comptroller General’s access to information**

The Administrator and personnel in the Office of Federal Procurement Policy shall furnish information the Comptroller General may require to discharge the responsibilities of the Comptroller General. For this purpose, the Comptroller General or representatives of the Comptroller General shall have access to all books, documents, papers, and records of the Office of Federal Procurement Policy.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)

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<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2307 .....	41:412(a).	Pub. L. 93-400, §14(a), Aug. 30, 1974, 88 Stat. 800.

SENATE REVISION AMENDMENT

In text, “representatives of the Comptroller General” substituted for “his representatives” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18682 (2010).

**§ 2308. Modular contracting for information technology**

(a) USE.—To the maximum extent practicable, the head of an executive agency should use modular contracting for an acquisition of a major system of information technology.

(b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency’s need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) PROVISIONS IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attaining those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(2) to the maximum extent practicable, a contract for an increment of an information technology acquisition should be awarded within 180 days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the solicitation resulting in award of the contract was issued.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3737.)