

SEC. 6. *Judicial Review.* This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

SEC. 7. *Construction.* (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

[Amendment by Ex. Ord. 13378 directing insertion of “and” after “diminish;” in section 3(m) of Ex. Ord. 12788, was executed by substituting “; and” for the comma after “diminish”.]

§ 2392. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97-86, title IX, §913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116-283, inserted after section 4652, and redesignated as section 4653 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY; PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM REPORTS

Pub. L. 97-252, title XI, §1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98-94, title XII, §1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98-525, title XII, §1254, Oct. 19, 1984, 98 Stat. 2611, authorized the Secretary of Defense to conduct a test program during fiscal years 1983, 1984, and 1985 to test the effect of exempting certain contracts of the Department of Defense from the provisions of this section and paying a price differential under such contracts for the purpose of relieving economic dislocations, provided that the Secretary could exempt any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract was to be awarded to an individual or firm located in a Labor Surplus Area, and directed the President to submit a report to Congress not later than Apr. 15, 1983, Apr. 15, 1984, and Apr. 15, 1985, on the implementation and results to that date of the program. Similar provisions were contained in Pub. L. 97-86, title IX, §913(b), (c), Dec. 1, 1981, 95 Stat. 1124.

§ 2393. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice on a publicly accessible website to the maximum extent practicable.

(c) In this section:

(1) The term “debar” means to exclude, pursuant to established administrative procedures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term “suspend” means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41). The requirement shall not apply in the case of a subcontract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(Added Pub. L. 97-86, title IX, §914(a), Dec. 1, 1981, 95 Stat. 1124; amended Pub. L. 100-180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101-510, div. A, title VIII, §813, Nov. 5,

1990, 104 Stat. 1596; Pub. L. 102-190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103-355, title IV, § 4102(e), title VIII, § 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111-350, § 5(b)(24), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 113-66, div. A, title VIII, § 813, Dec. 26, 2013, 127 Stat. 808; Pub. L. 115-232, div. A, title VIII, § 836(e)(3), Aug. 13, 2018, 132 Stat. 1869.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by subsection 1862(a) of Pub. L. 116-283, inserted after section 4653, and redesignated as section 4654 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115-232 substituted “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)” for “commercial items (as defined in section 103 of title 41)”.

2013—Subsec. (b). Pub. L. 113-66 substituted “on a publicly accessible website to the maximum extent practicable” for “in a file available for public inspection”.

2011—Subsec. (d). Pub. L. 111-350 substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” and “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

1994—Subsec. (d). Pub. L. 103-355 substituted “greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))” for “above the small purchase amount established in section 2304(g) of this title.” in second sentence and inserted at end “The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).”

1991—Subsec. (d). Pub. L. 102-190 substituted “Federal Government” for “Federal government”.

1990—Subsec. (d). Pub. L. 101-510 added subsec. (d).

1987—Subsec. (c). Pub. L. 100-180 inserted “The term” after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

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.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

[§ 2394. Renumbered § 2922a]

CODIFICATION

Another section 2394 was renumbered section 2395 of this title.

[§ 2394a. Renumbered § 2922b]

§ 2395. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military equipment and supplies remain available until spent.

(Added Pub. L. 97-258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, § 2394; renumbered § 2395 and amended Pub. L. 97-295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§ 1801(d), 1809(c), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116-283, inserted after section 3131, as transferred and redesignated by subsection 1809(b) of Pub. L. 116-283, and redesignated as section 3132 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97-258)

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, § 40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92-156, § 201(b), 85 Stat. 424.

The words “Unless otherwise provided in the appropriation Act concerned” are omitted as unnecessary and for consistency. The word “Funds” is substituted for “moneys” for consistency in title 10. The word “military” is added before “public” for clarity. The words “including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles” are omitted as included in “technical military equipment”.

1982 ACT (PUB. L. 97-295)

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2395	10:2394.	Sept. 13, 1982, Pub. L. 97-258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97-258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97-214, § 6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words “and the construction of military public works” because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97-214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97-258, section 2(b)(4)(B) of which enacted 10:2394.

CODIFICATION

Another section 2395 was renumbered section 2396 of this title.

AMENDMENTS

1982—Pub. L. 97-295 struck out “and the construction of military public works” after “supplies”.