

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

HISTORICAL AND REVISION NOTES

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2308 .....	41:434.	Pub. L. 93-400, §38, formerly §35, as added Pub. L. 104-106, title LII, §5202(a), Feb. 10, 1996, 110 Stat. 690; renumbered §38, Pub. L. 104-201, title X, §1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.

§ 2309. Protection of constitutional rights of contractors

(a) PROHIBITION ON REQUIRING WAIVER OF RIGHTS.—A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive a right under the Constitution for a purpose relating to the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in section 3 of that Act (22 U.S.C. 6701)).

(b) PERMISSIBLE CONTRACT CLAUSES.—Subsection (a) does not prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections to ensure that the contractor is performing the contract in accordance with the provisions of the contract.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3738.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2309 .....	41:436.	Pub. L. 93-400, §40, formerly §39, as added Pub. L. 105-277, title III, §308(a), Oct. 21, 1998, 112 Stat. 2681-879; renumbered §40, Pub. L. 108-136, title XIV, §1431(d)(2), Nov. 24, 2003, 117 Stat. 1672.

In subsection (a), the reference is to the Chemical Weapons Convention Implementation Act of 1998 rather than the Chemical Weapons Convention Implementation Act of 1997 to correct an error in the source provision.

Editorial Notes

REFERENCES IN TEXT

The Chemical Weapons Convention Implementation Act of 1998, referred to in subsec. (a), is Pub. L. 105-277, div. I, Oct. 21, 1998, 112 Stat. 2681-856, which is classified principally to chapter 75 (§6701 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 6701 of Title 22 and Tables.

§ 2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items

(a) CRITERIA.—A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

(1) the value of the contract or task order is estimated not to exceed \$25,000,000;

(2) the contract or task order sets forth specifically each task to be performed and, for each task—

- (A) defines the task in measurable, mission-related terms;
- (B) identifies the specific end products or output to be achieved; and
- (C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) REGULATIONS.—Regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) REPORT.—Not later than 2 years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Homeland Security and Governmental Affairs and on Armed Services of the Senate and the Committees on Oversight and Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of the authority, both government-wide and for each department and agency.

(d) EXPIRATION.—The authority under this section expires 10 years after November 24, 2003.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3738.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2310 .....	41:437.	Pub. L. 93-400, §41, as added Pub. L. 108-136, title XIV, §1431(a), Nov. 24, 2003, 117 Stat. 1671.

In subsection (c), the words “Committees on Homeland Security and Governmental Affairs” are substituted for “Committees on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words “Committees on Oversight and Government Reform” are substituted for “Committees on Government Reform” on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

**§ 2311. Enhanced transparency on interagency contracting and other transactions**

The Director of the Office of Management and Budget shall direct appropriate revisions to the Federal Procurement Data System or any successor system to facilitate the collection of complete, timely, and reliable data on interagency contracting actions and on transactions other than contracts, grants, and cooperative agreements issued pursuant to section 4021 of title 10 or similar authorities. The Director of the Office of Management and Budget shall ensure that data, consistent with what is collected for contract actions, is obtained on—

- (1) interagency contracting actions, including data at the task or delivery-order level; and

- (2) other transactions, including the initial award and any subsequent modifications awarded or orders issued (other than transactions that are reported through the Federal Assistance Awards Data System).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3739; Pub. L. 117-81, div. A, title XVII, §1702(h)(11), Dec. 27, 2021, 135 Stat. 2158.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2311 .....	41:405 note.	Pub. L. 110-417, [div. A], title VIII, §874(a), Oct. 14, 2008, 122 Stat. 4558.

In the first sentence, the words “Not later than one year after the date of enactment of this Act” are omitted because of section 6(f) of the bill.

**Editorial Notes**

AMENDMENTS

2021—Pub. L. 117-81 substituted “section 4021” for “section 2371” in introductory provisions.

**Statutory Notes and Related Subsidiaries**

DEADLINE FOR REVISIONS IN FEDERAL PROCUREMENT DATA SYSTEM OR SUCCESSOR SYSTEM

Pub. L. 111-350, §6(f)(2), Jan. 4, 2011, 124 Stat. 3855, provided that: “The requirement in section 2311 of title 41, United States Code, to direct appropriate revisions in the Federal Procurement Data System or any successor system shall be done not later than one year after October 14, 2008.”

**§ 2312. Contingency Contracting Corps**

(a) DEFINITION.—In this section, the term “Corps” means the Contingency Contracting Corps established in subsection (b).

(b) ESTABLISHMENT.—The Administrator of General Services, pursuant to policies established by the Office of Management and Budget, and in consultation with the Secretary of Defense and the Secretary of Homeland Security, shall establish a Government-wide Contingency Contracting Corps.

(c) FUNCTION.—The members of the Corps shall be available for deployment in responding to an emergency or major disaster, or a contingency operation, both within or outside the continental United States.

(d) APPLICABILITY.—The authorities provided in this section apply with respect to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used—

- (1) in support of a contingency operation as defined in section 101(a)(13) of title 10; or
- (2) to respond to an emergency or major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(e) MEMBERSHIP.—Membership in the Corps shall be voluntary and open to all Federal employees and members of the Armed Forces who are members of the Federal acquisition workforce.

(f) EDUCATION AND TRAINING.—The Administrator of General Services may, in consultation with the Director of the Federal Acquisition In-