

“(ii) Section 303A ([former] 41 U.S.C. 253a) [see 41 U.S.C. 3306].

“(iii) Section 303B ([former] 41 U.S.C. 253b) [now 41 U.S.C. 3308, 3701 to 3708, 4702].

“(iv) Section 303C [former] (41 U.S.C. 253c) [now 41 U.S.C. 3311].

“(C) The following provisions of the Office of Federal Procurement Policy Act:

“(i) Section 4(6) ([former] 41 U.S.C. 403(6)) [see 41 U.S.C. 107].

“(ii) Section 18 ([former] 41 U.S.C. 416) [see 41 U.S.C. 1708].

“(g) DEFINITION.—In this section, the term ‘commercial item’ has the meaning provided that term in section 4(12) of the Office of Federal Procurement Policy Act [see 41 U.S.C. 103].

“(h) EXPIRATION OF AUTHORITY.—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

“(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a).”

**§ 40111. Multiyear procurement contracts for services and related items**

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31, the Administrator of the Federal Aviation Administration may make a contract of not more than 5 years for the following types of services and items of supply related to those services for which amounts otherwise would be available for obligation only in the fiscal year for which appropriated:

- (1) operation, maintenance, and support of facilities and installations.
- (2) operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment.
- (3) specialized training requiring high quality instructor skills, including training of pilots and aircrew members and foreign language training.
- (4) base services, including ground maintenance, aircraft refueling, bus transportation, and refuse collection and disposal.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section only if the Administrator finds that—

- (1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;
- (2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and
- (3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(c) CONSIDERATIONS.—When making a contract under this section, the Administrator shall be guided by the following:

- (1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the an-

ticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

(2) The Administrator shall consider the desirability of—

- (A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and
- (B) reserving in the Administrator the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

(d) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

- (1) an appropriation originally available for carrying out the contract;
- (2) an appropriation currently available for procuring the type of service concerned and not otherwise obligated; or
- (3) amounts appropriated for payments to end the contract.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1107.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40111(a) .....	49 App.:1344(e)(1).	Aug. 23, 1958, Pub. L. 85-726, §303(e), 72 Stat. 747; May 21, 1970, Pub. L. 91-258, §51(a)(1), 84 Stat. 234; July 12, 1976, Pub. L. 94-353, §16, 90 Stat. 882; Oct. 19, 1980, Pub. L. 96-470, §112(e), 94 Stat. 2240; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444; re-stated Nov. 5, 1990, Pub. L. 101-508, §9118(a), 104 Stat. 1388-366.
40111(b) .....	49 App.:1344(e)(2).	
40111(c) .....	49 App.:1344(e)(3).	
40111(d) .....	49 App.:1344(e)(4).	

In this section, the word “Administrator” in section 303(e) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 747) is retained on authority of 49:106(g).

In subsection (a), before clause (1), the words “periods of” are omitted as surplus. In clause (3), the words “training of” are added for clarity. In clause (4), the word “aircraft” is substituted for “in-plane” for clarity.

In subsection (c)(2)(A), the words “plant, equipment, and other” are omitted as surplus.

In subsection (d), the words “canceled or” and “cancellation or” are omitted as being included in “ended” and “ending”, respectively.

**§ 40112. Multiyear procurement contracts for property**

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, the Administrator of the Federal Aviation Administration may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property.

(b) **REQUIRED FINDINGS.**—The Administrator may make a contract under this section if the Administrator finds that—

- (1) the contract will promote the safety or efficiency of the national airspace system and will result in reduced total contract costs;
- (2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;
- (3) there is a reasonable expectation that throughout the proposed contract period the Administrator will request appropriations for the contract at the level required to avoid cancellation;
- (4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and
- (5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

(c) **REGULATIONS.**—The Administrator shall prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and nonrecurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable—

- (1) to broaden the aviation industrial base—
  - (A) a contract under this section shall be used to seek, retain, and promote the use under that contract of subcontractors, vendors, or suppliers; and
  - (B) on accrual of a payment or other benefit accruing on a contract under this section to a subcontractor, vendor, or supplier participating in the contract, the payment or benefit shall be delivered in the most expeditious way practicable; and
- (2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Administrator to provide for—
  - (A) competition in producing items to be delivered under a contract under this section; or
  - (B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

(d) **CONTRACT PROVISIONS.**—(1) A contract under this section may—

- (A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;
- (B) provide that performance under the contract after the first year is subject to amounts being appropriated; and
- (C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

(e) **CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.**—(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

(2) Before awarding a contract under this section containing a cancellation ceiling of more than \$100,000,000, the Administrator shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

(f) **ENDING CONTRACTS.**—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

- (1) an appropriation originally available for carrying out the contract;
- (2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or
- (3) amounts appropriated for payments to end the contract.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1108; Pub. L. 104–106, div. E, title LVI, §5606, Feb. 10, 1996, 110 Stat. 700; Pub. L. 104–287, §5(9), Oct. 11, 1996, 110 Stat. 3389.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40112(a) .....	49 App.:1344(f)(1) (words before 4th comma), (6), (7) (1st sentence).	Aug. 23, 1958, Pub. L. 85–726, §303(f), 72 Stat. 747; May 21, 1970, Pub. L. 91–258, §51(a)(1), 84 Stat. 234; July 12, 1976, Pub. L. 94–353, §16, 90 Stat. 882; Oct. 19, 1980, Pub. L. 96–470, §112(e), 94 Stat. 2240; Jan. 12, 1983, Pub. L. 97–449, §7(b), 96 Stat. 2444; re-stated Nov. 5, 1990, Pub. L. 101–508, §9118(a), 104 Stat. 1388–367.
40112(b) .....	49 App.:1344(f)(1) (words after 4th comma).	
40112(c) .....	49 App.:1344(f)(2).	
40112(d) .....	49 App.:1344(f)(4) (words before 3d comma).	
40112(d) (1)(A).	49 App.:1344(f)(7) (last sentence words before “and (if”).	
40112(d) (1)(B).	49 App.:1344(f)(8).	
40112(d) (1)(C).	49 App.:1344(f)(4) (words after 3d comma).	
40112(d)(2) ..	49 App.:1344(f)(7) (last sentence words after “of funds”).	
40112(e)(1) ..	49 App.:1344(f)(3).	
40112(e)(2) ..	49 App.:1344(f)(5).	
40112(f) .....		

In this section, the word “Administrator” in section 303(f) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 747) is retained on authority of 49:106(g).

In subsection (a), the reference in 49 App.:1344(f)(7) to a contract for the purchase of services is omitted as surplus because 49 App.:1344(f)(1) states that the subsection is concerned only with contracts for the purchase of property.

In subsection (b)(5), the word “savings” is substituted for “cost avoidance” for clarity.

In subsection (c), before clause (1), the word “both” is omitted as surplus. In clause (1)(A), the words “in such a manner as” and “companies that are” are omitted as surplus. In clause (1)(B), the words “accruing on” are substituted for “under” for clarity. The words “subcontractor” and “contract” are substituted for “subcontract” and “contractor”, respectively, to correct errors in the source provisions being restated.

In subsection (d)(1)(B), the words “after the first year” are substituted for “during the second and subsequent years of the contract” to eliminate unnecessary words.

In subsection (e)(2), the words “a clause setting forth” are omitted as surplus.

In subsection (f), the words “canceled or” and “cancellation or” are omitted as being included in “ended” and “ending”, respectively.

### Editorial Notes

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106 struck out “or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies” after “improvement to real property”.

Subsec. (e)(2). Pub. L. 104-287 substituted “Transportation and Infrastructure” for “Public Works and Transportation”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

### § 40113. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation (or the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by that Administrator or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by that Administrator) may take action the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) HAZARDOUS MATERIAL.—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section 5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

(c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government

on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) INDEMNIFICATION.—The Administrator of the Federal Aviation Administration may indemnify an officer or employee of the Federal Aviation Administration against a claim or judgment arising out of an act that the Administrator decides was committed within the scope of the official duties of the officer or employee.

(e) ASSISTANCE TO FOREIGN AVIATION AUTHORITIES.—

(1) SAFETY-RELATED TRAINING AND OPERATIONAL SERVICES.—The Administrator may provide safety-related training and operational services to foreign aviation authorities (whether public or private) with or without reimbursement, if the Administrator determines that providing such services promotes aviation safety or efficiency. The Administrator may also provide technical assistance related to all aviation safety-related training and operational services in connection with bilateral and multilateral agreements, including further bolstering the components of airmanship. The Administrator is authorized to participate in, and submit offers in response to, competitions to provide these services, and to contract with foreign aviation authorities to provide these services consistent with section 106(l)(6). To the extent practicable, air travel reimbursed under this subsection shall be conducted on United States air carriers.

(2) REIMBURSEMENT SOUGHT.—The Administrator shall actively seek reimbursement for services provided under this subsection from foreign aviation authorities capable of providing such reimbursement. The Administrator is authorized, notwithstanding any other provision of law or policy, to accept payments for services provided under this subsection in arrears.

(3) CREDITING APPROPRIATIONS.—Funds received by the Administrator pursuant to this section shall—

(A) be credited to the appropriation current when the amount is received;

(B) be merged with and available for the purposes of such appropriation; and

(C) remain available until expended.

(4) REPORTING.—Not later than December 31, 1995, and annually thereafter, the Administrator shall transmit to Congress a list of the foreign aviation authorities to which the Administrator provided services under this subsection in the preceding fiscal year. Such list shall specify the dollar value of such services and any reimbursement received for such services.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the