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TITLE 49--TRANSPORTATION

SUBTITLE VII--AVIATION PROGRAMS

PART A--AIR COMMERCE AND SAFETY

subpart i--general

CHAPTER 401--GENERAL PROVISIONS

Sec. 40110. General procurement authority

(a) General.--In carrying out this part, the Administrator of the Federal Aviation Administration--

(1) to the extent that amounts are available for obligation, may acquire services or, by condemnation or otherwise, an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) may dispose of an interest in property for adequate compensation; and

(3) may construct and improve laboratories and other test facilities.

(b) Purchase of Housing Units.--

(1) Authority.--In carrying out this part, the Administrator may purchase a housing unit (including a condominium or a housing unit in a building owned by a cooperative) that is located outside the contiguous United States if the cost of the unit is \$300,000 or less.

(2) Adjustments for inflation.--For fiscal years beginning after September 30, 1997, the Administrator may adjust the dollar amount specified in paragraph (1) to take into account increases in local housing costs.

(3) Continuing obligations.--Notwithstanding section 1341 of title 31, the Administrator may purchase a housing unit under paragraph (1) even if there is an obligation thereafter to pay necessary and reasonable fees duly assessed upon such unit, including fees related to operation, maintenance, taxes, and insurance.

(4) Certification to congress.--The Administrator may purchase a housing unit under paragraph (1) only if, at least 30 days before completing the purchase, the Administrator transmits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing--

(A) a description of the housing unit and its price;

(B) a certification that the price does not exceed the median price of housing units in the area; and

(C) a certification that purchasing the housing unit is the most cost-beneficial means of providing necessary accommodations in carrying out this part.

(5) Payment of fees.--The Administrator may pay, when due, fees resulting from the purchase of a housing unit under this subsection from any amounts made available to the Administrator.

(c) Duties and Powers.--When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration may--

(1) notwithstanding section 1341(a)(1) of title 31, lease an interest in property for not more than 20 years;

(2) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace;

(3) construct, or acquire an interest in, a public building (as defined in section 3301(a) of title 40) only under a delegation of authority from the Administrator of General Services;

(4) use procedures other than competitive procedures only when the property or services needed by the Administrator of the Federal Aviation Administration are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the Administrator; and

(5) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under sections

121, 123, and 126 and chapter 5 of title 40.

(d) Acquisition Management System.--

(1) In general.--In consultation with such non-governmental experts in acquisition management systems as the Administrator may employ, and notwithstanding provisions of Federal acquisition law, the Administrator shall develop and implement an acquisition management system for the Administration that addresses the unique needs of the agency and, at a minimum, provides for--

(A) more timely and cost-effective acquisitions of equipment, services, property, and materials; and

(B) the resolution of bid protests and contract disputes related thereto, using consensual alternative dispute resolution techniques to the maximum extent practicable.

(2) Applicability of federal acquisition law.--The following provisions of Federal acquisition law shall not apply to the new acquisition management system developed and implemented pursuant to paragraph (1):

(A) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252-266).

(B) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), except for section 315 (41 U.S.C. 265). For the purpose of applying section 315 of that Act to the system, the term "executive agency" is deemed to refer to the Federal Aviation Administration.

(D) The Small Business Act (15 U.S.C. 631 et seq.), except that all reasonable opportunities to be awarded contracts shall be provided to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(E) The Competition in Contracting Act.

(F) Subchapter V of chapter 35 of title 31, relating to the procurement protest system.

(G) The Federal Acquisition Regulation and any laws not listed in subparagraphs (A) through (F) providing authority to promulgate regulations in the Federal Acquisition Regulation.

(3) Certain provisions of the office of federal procurement policy act.--Notwithstanding paragraph (2)(B), section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) shall apply to the new acquisition management system developed and implemented under paragraph (1) with the following modifications:

(A) Subsections (f) and (g) shall not apply.

(B) Within 90 days after the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Administrator shall adopt definitions for the acquisition management system that are consistent with the purpose and intent of the Office of Federal Procurement Policy Act.

(C) After the adoption of those definitions, the criminal, civil, and administrative remedies provided under the Office of Federal Procurement Policy Act apply to the acquisition management system.

(D) In the administration of the acquisition management system, the Administrator may take adverse personnel action under section 27(e)(3)(A)(iv) of the Office of Federal Procurement Policy Act in accordance with the procedures contained in the Administration's personnel management system.

(4) Adjudication of certain bid protests and contract disputes.--A bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under section 46110 and to section 504 of title 5.

(e) Prohibition on Release of Offeror Proposals.--

(1) General rule.--Except as provided in paragraph (2), a proposal in the possession or control of the Administrator may not be made available to any person under section 552 of title 5.

(2) Exception.--Paragraph (1) shall not apply to any portion of a proposal of an offeror the disclosure of which is authorized by the Administrator pursuant to procedures published in the Federal Register. The Administrator shall provide an opportunity for public comment on the procedures for a period of not less than 30 days beginning on the date of such publication in order to receive and consider the views of all interested parties on the procedures. The procedures shall not take effect before the 60th day following the

date of such publication.

(3) Proposal defined.--In this subsection, the term ``proposal'' means information contained in or originating from any proposal, including a technical, management, or cost proposal, submitted by an offeror in response to the requirements of a solicitation for a competitive proposal.

(Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1106; Pub. L. 103-429, Sec. 6(48), (80), Oct. 31, 1994, 108 Stat. 4384, 4388; Pub. L. 104-264, title XII, Sec. 1201, Oct. 9, 1996, 110 Stat. 3279; Pub. L. 106-181, title III, Sec. 307(b), title VII, Sec. 703, Apr. 5, 2000, 114 Stat. 125, 156; Pub. L. 107-217, Sec. 3(n)(5), Aug. 21, 2002, 116 Stat. 1302; Pub. L. 108-176, title II, Secs. 222, 224(a), (b), Dec. 12, 2003, 117 Stat. 2527; Pub. L. 108-178, Sec. 4(k), Dec. 15, 2003, 117 Stat. 2642.)

Historical and Revision Notes
Pub. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40110(a).....	49 App.:1344(a)(1) (less term of lease), (2) (words before 1st semicolon), (3).	Aug. 23, 1958, Pub. L. 85-726, Sec. 303(a)-(d), 72 Stat. 747; May 21, 1970, Pub. L. 91-258, Sec. 51(a)(1), 84 Stat. 234; July 12, 1976, Pub. L. 94-353, Sec. 16, 90 Stat. 882; Oct. 19, 1980, Pub. L. 96-470, Sec. 112(e), 94 Stat. 2240; Jan. 12, 1983, Pub. L. 97-449, Sec. 7(b), 96 Stat. 2444; restated Nov. 5, 1990, Pub. L. 101-508, Sec. 9118(a), 104 Stat. 1388-365.
40110(b)(1).....	49 App.:1344(d).	
40110(b) (2)(A).....	49 App.:1344(a)(1) (related to term of lease).	
40110(b) (2)(B).....	49 App.:1344(b)(1).	
40110(b) (2)(C).....	49 App.:1344(b)(2).	
40110(b) (2)(D).....	49 App.:1344(c).	
40110(b) (2)(E).....	49 App.:1344(g).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 747, Sec. 303(g); added Oct. 31, 1992, Pub. L. 102-581, Sec. 201(a), 106 Stat. 4890.
40110(b) (2)(F).....	49 App.:1344(a)(2) (words after 1st semicolon).	

In this section, the word ``Administrator'' in section 303(a)-(d) 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 ``In carrying out this part'' are added for clarity. The words ``on behalf of the United States . . . where appropriate'' are omitted as surplus. In clause (1), the words ``made by the Congress'', ``by purchase, condemnation . . . or otherwise'', and ``easements through or other'' are omitted as surplus. In clause (2), the words ``by sale, lease, or otherwise'' and ``real or personal'' are omitted as surplus. In clause (3), the word ``renovate'' is omitted as surplus. The words ``and to purchase or otherwise acquire real property required therefor'' are omitted as surplus because of the authority of the Administrator to acquire real property under clause (1) of this subsection.

In subsection (b)(1), the words ``procedures other than competitive procedures'' are substituted for ``noncompetitive procedures'' for consistency with subsection (b)(2)(D) of this section and 41:253(f).

In subsection (b)(2)(B), the text of 49 App.:1344(b)(1) (words before semicolon) and the words ``easements through or other'' are omitted as surplus.

In subsection (b)(2)(C), the words ``by purchase, condemnation, or lease'' are omitted as surplus.

Subsection (b)(2)(E) is substituted for 49 App.:1344(g) to eliminate the cross-references to other laws and for clarity and is based on the text of 10:2304(c)(1).

Pub. L. 103-429

This amends 49:40110(a) to clarify the restatement of 49 App.:1344(a)(1)-(3) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1106).

References in Text

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (d)(2)(A), is act June 30, 1949, ch. 288, 63

Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (Sec. 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The Office of Federal Procurement Policy Act, referred to in subsec. (d)(2)(B), (3)(B), (C), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (Sec. 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

The Federal Acquisition Streamlining Act of 1994, referred to in subsec. (d)(2)(C), is Pub. L. 103-355, Oct. 13, 1994, 108 Stat. 3243. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 251 of Title 41, Public Contracts, and Tables.

The Small Business Act, referred to in subsec. (d)(2)(D), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Competition in Contracting Act, referred to in subsec. (d)(2)(E), probably means the Competition in Contracting Act of 1984, which is title VII of Pub. L. 98-369, div. B, July 18, 1984, 98 Stat. 1175. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 251 of Title 41, Public Contracts, and Tables.

The date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, referred to in subsec. (d)(3)(B), is the date of enactment of Pub. L. 106-181, which was approved Apr. 5, 2000.

Amendments

2003--Subsec. (c). Pub. L. 108-176, Sec. 224(a), struck out par. (1), which related to the senior procurement executive, par. (2) designation before ``may--'', and subpar. (D) of par. (2), which related to use procedures other than competitive procedures, redesignated subpars. (A), (B), (C), (E), and (F) of par. (2) as pars. (1) to (5), respectively, and realigned margins.

Subsec. (d)(1). Pub. L. 108-176, Sec. 224(b)(1), struck out `` , not later than January 1, 1996,'' after ``shall develop and implement'', substituted ``provides for--'' for ``provides for more timely and cost-effective acquisitions of equipment and materials.'', and added subpars. (A) and (B).

Subsec. (d)(2)(C). Pub. L. 108-176, Sec. 222, substituted ``(Public Law 103-355), except for section 315 (41 U.S.C. 265). For the purpose of applying section 315 of that Act to the system, the term `executive agency' is deemed to refer to the Federal Aviation Administration.'' for ``(Public Law 103-355).''

Subsec. (d)(2)(G). Pub. L. 108-178, Sec. 4(k)(3), substituted ``subparagraphs (A) through (F)'' for ``subparagraphs (A) through (G)''.

Pub. L. 108-178, Sec. 4(k)(1), (2), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ``The Brooks Automatic Data Processing Act (40 U.S.C. 759).''

Subsec. (d)(2)(H). Pub. L. 108-178, Sec. 4(k)(2), redesignated subpar. (H) as (G).

Subsec. (d)(4). Pub. L. 108-176, Sec. 224(b)(2), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ``This subsection shall take effect on April 1, 1996.''

2002--Subsec. (c)(2)(C). Pub. L. 107-217, Sec. 3(n)(5)(A), substituted ``(as defined in section 3301(a) of title 40)'' for ``(as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612))''.

Subsec. (c)(2)(F). Pub. L. 107-217, Sec. 3(n)(5)(B), substituted ``sections 121, 123, and 126 and chapter 5 of title 40'' for ``title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

2000--Subsecs. (d), (e). Pub. L. 106-181 added subsecs. (d) and (e). 1996--Subsecs. (b), (c). Pub. L. 104-264 added subsec. (b) and redesignated former subsec. (b) as (c).

1994--Subsec. (a). Pub. L. 103-429, Sec. 6(48), in introductory provisions, struck out ``may'' after ``Administration'', in par. (1), struck out ``acquire,'' before ``to the extent'' and substituted ``may acquire services or, by condemnation or otherwise,'' for ``services or'', and in pars. (2) and (3), inserted ``may'' after par. designation.

Subsec. (b)(2)(A). Pub. L. 103-429, Sec. 6(80), inserted ``notwithstanding section 1341(a)(1) of title 31,'' before ``lease''.

Effective Date of 2003 Amendments

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5

of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

FAA Evaluation of Long-Term Capital Leasing

Pub. L. 106-181, title VII, Sec. 704, Apr. 5, 2000, 114 Stat. 157, provided that:

``(a) In General.--The Administrator [of the Federal Aviation Administration] may carry out a pilot program in fiscal years 2001 through 2003 to test and evaluate the benefits of long-term contracts for the leasing of aviation equipment and facilities.

``(b) Period of Contracts.--Notwithstanding any other provision of law, the Administrator may enter into a contract under the program to lease aviation equipment or facilities for a period of greater than 5 years.

``(c) Number of Contracts.--The Administrator may not enter into more than [than] 10 contracts under the program.

``(d) Types of Contracts.--The contracts to be evaluated under the program may include contracts for telecommunication services that are provided through the use of a satellite, requirements related to oceanic and air traffic control, air-to-ground radio communications, and air traffic control tower construction.''

Assessment of Acquisition Management System

Section 251 of Pub. L. 104-264 provided that: ``Not later than April 1, 1999, the Administrator [of the Federal Aviation Administration] shall employ outside experts to provide an independent evaluation of the effectiveness of the Administration's [Federal Aviation Administration] acquisition management system within 3 months after such date. The Administrator shall transmit a copy of the evaluation to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''

Pub. L. 104-205, title III, Sec. 351, Sept. 30, 1996, 110 Stat. 2979, provided that: ``Not later than December 31, 1997, the Administrator of the Federal Aviation Administration shall--

``(a) take such action as may be necessary to provide for an independent assessment of the acquisition management system of the Federal Aviation Administration that includes a review of any efforts of the Administrator in promoting and encouraging the use of full and open competition as the preferred method of procurement with respect to any contract that involves an amount greater than \$50,000,000; and

``(b) submit to the Congress a report on the findings of that independent assessment: Provided, That for purposes of this section, the term 'full and open competition' has the meaning provided that term in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).''

Acquisition Management System for Federal Aviation Administration

Pub. L. 104-50, title III, Sec. 348, Nov. 15, 1995, 109 Stat. 460, required the Administrator of the Federal Aviation Administration to develop and implement, not later than Jan. 1, 1996, an acquisition

management system, exempt from specified federal procurement and acquisition laws, to provide for more timely and cost-effective acquisitions of equipment and materials, prior to repeal by Pub. L. 106-181, title III, Sec. 307(d), Apr. 5, 2000, 114 Stat. 126.

Alternative Procurement and Acquisition Pilot Program

Pub. L. 103-355, title V, Sec. 5063, Oct. 13, 1994, 108 Stat. 3356, provided that:

“(a) Authority.--The Secretary of Transportation may conduct a test of alternative and innovative procurement procedures in carrying out acquisitions for one of the modernization programs under the Airway Capital Investment Plan prepared pursuant to section 44501(b) of title 49, United States Code. In conducting such test, the Secretary shall consult with the Administrator for Federal Procurement Policy.

“(b) Pilot Program Implementation.--(1) The Secretary of Transportation should prescribe policies and procedures for the interaction of the program manager and the end user executive responsible for the requirement for the equipment acquired. Such policies and procedures should include provisions for enabling the end user executive to participate in acceptance testing.

“(2) Not later than 45 days after the date of enactment of this Act [Oct. 13, 1994], the Secretary of Transportation shall identify for the pilot program quantitative measures and goals for reducing acquisition management costs.

“(3) The Secretary of Transportation shall establish for the pilot program a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that--

“(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

“(B) reduce data requirements from the current program review reporting requirements.

“(c) Special Authorities.--The authority provided by subsection (a) shall include authority for the Secretary of Transportation--

“(1) to apply any amendment or repeal of a provision of law made in this Act [see Short Title of 1994 Amendment note set out under section 251 of Title 41, Public Contracts] to the pilot program before the effective date of such amendment or repeal; and

“(2) to apply to a procurement of items other than commercial items under such program--

“(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

“(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

“(d) Applicability.--Subsection (c) applies with respect to--

“(1) a contract that is awarded or modified after the date occurring 45 days after the date of the enactment of this Act [Oct. 13, 1994]; and

“(2) a contract that is awarded before such date and is to be performed (or may be performed), in whole or in part, after such date.

“(e) Procedures Authorized.--The test conducted under this section may include any of the following procedures:

“(1) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

“(2) Restriction of competitions to sources of preevaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

“(3) Alternative notice and publication requirements.

“(4) A process in which--

“(A) the competitive process is initiated by publication in the Commerce Business Daily, or by dissemination through FACNET, of a notice that--

“(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

“(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source's technical capability, past performance, product

supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

``(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources and, if the officials determine necessary, after consultation with those sources; and

``(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

``(f) Waiver of Procurement Regulations.--(1) In conducting the test under this section, the Secretary of Transportation, with the approval of the Administrator for Federal Procurement Policy, may waive--

``(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

``(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to test procedures authorized by subsection (e).

``(2) The provisions of law referred to in paragraph (1) are as follows:

``(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

``(B) The following provisions of the Federal Property and Administrative Services Act of 1949:

``(i) Section 303 (41 U.S.C. 253).

``(ii) Section 303A (41 U.S.C. 253a).

``(iii) Section 303B (41 U.S.C. 253b).

``(iv) Section 303C (41 U.S.C. 253c).

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

``(i) Section 4(6) (41 U.S.C. 403(6)).

``(ii) Section 18 (41 U.S.C. 416).

``(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 [41 U.S.C. 403(12)].

``(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).'