

found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. (As amended 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F. R. 4534, 61 Stat. 951; June 25, 1948, ch. 645, § 21, 62 Stat. 862.)

REPEALS

Act June 25, 1948, cited to text, repealed subsecs. (a), (d), and (e) of section leaving only subsec. (c) in operation.

CROSS REFERENCES

War contracts penal provision as comprehending the definitions of terms used in this section, see section 443 of Title 18, Crimes and Criminal Procedure.

§§ 120, 121.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of General Services by section 102 (b) of act June 30, 1949, ch. 288, title I, 63 Stat. 380.

"Secretary" was substituted for "Director" in text of these sections by 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F. R. 4534, 61 Stat. 951. See note to section 104 of this title.

Transfer of Smaller War Plants Corporation functions under this section, see Ex. Ord. No. 9665, Dec. 27, 1945, 10 F. R. 15365, 11 F. R. 3, set out in note to section 1104 of Appendix to Title 50, War and National Defense.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

§§ 122, 123.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of General Services by section 102 (b) of act June 30, 1949, ch. 288, title I, 63 Stat. 380.

"Secretary" was substituted for "Director" in text of these sections by 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F. R. 4534, 61 Stat. 951. See note to section 104 of this title.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

§ 125. Exemption of certain contracts outside continental United States or in Alaska.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Treasury were transferred to the Administrator of General Services by section 102 (b) of act June 30, 1949, ch. 288, title I, 63 Stat. 380.

"Secretary" was substituted for "Director" in text of this section by 1947 Reorg. Plan No. 1, § 201, eff. July 1, 1947, 12 F. R. 4534, 61 Stat. 951. See note to section 104 of this title.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

Chapter 3.—PROCUREMENT OF SUPPLIES AND SERVICES BY ARMED SERVICES [NEW]

Sec.

151. Purchases and contracts for supplies and services.

- (a) Applicability to all Armed Services.
- (b) Congressional declaration of policy.
- (c) Advertising requirements; exception of certain purchases and contracts from requirements.

Sec.

151. Purchases and contracts for supplies and services—Continued

- (d) Evidence of violation of antitrust laws; reference to Attorney General.
 - (e) Exclusion of certain authorizations and contracts from provisions of section.
152. Advertisements for bids; time; opening of bids; award or rejection of bids.
153. Types of contracts.
- (a) Discretion of agency head; warranty clause.
 - (b) Exclusion of cost-plus-a-percentage-of-cost contracts; regulations governing cost-plus-a-fixed-fee contracts.
 - (c) Examination of books, records, etc., of contractors; time limitation.
154. Advance payments under negotiated contracts; terms.
155. Remission of liquidated damages.
156. Determinations and decisions.
- (a) Powers of agency head; finality; delegation.
 - (b) Non-delegable powers; delegation to chief procurement officer only.
 - (c) Written decisions; finality; availability for six years; copy to General Accounting Office.
 - (d) Preservation of data of negotiations.
157. Exemption of purchases or contracts from certain other provisions of law.
158. Definitions.
159. Assignment and delegation of joint procurement responsibilities by agency head; limitations; allocation of appropriations.
160. Sections inapplicable to procurement of supplies and services.
161. Concurrent authority of Secretaries of Army, Navy, and Air Force.

§ 151. Purchases and contracts for supplies and services—(a) Applicability to all Armed Services.

The provisions of this chapter shall be applicable to all purchases and contracts for supplies or services made by the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Coast Guard, and the National Advisory Committee for Aeronautics (each being hereinafter called the agency), for the use of any such agency or otherwise, and to be paid for from appropriated funds.

(b) Congressional declaration of policy.

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of \$10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of supplies involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) Advertising requirements; exception of certain purchases and contracts from requirements.

All purchases and contracts for supplies and services shall be made by advertising, as provided in section 152 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed \$1,000;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical supplies;

(8) for supplies purchased for authorized resale;

(9) for perishable subsistence supplies;

(10) for supplies or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test: *Provided*, That beginning six months after the effective date of this chapter and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder;

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture, as determined by the agency head, when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies;

(15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid

price of a responsible bidder, as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) the agency head determines that it is in the interest of the national defense that any plant, mine, or facility or any producer, manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of a national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and development, are otherwise subserved: *Provided*, That beginning six months after the effective date of this chapter and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder; or

(17) otherwise authorized by law.

(d) Evidence of violation of antitrust laws; reference to Attorney General.

If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) Exclusion of certain authorizations and controls from provisions of section.

This section shall not be construed to (A) authorize erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 152 of this title, unless such contract is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraphs (1), (2), (3), (10), (11), (12), or (15) of subsection (c) of this section. (Feb. 19, 1948, ch. 65, § 2, 62 Stat. 21.)

EFFECTIVE DATE

Section 13 of act Feb. 19, 1948, cited to text, provided that this chapter should become effective 90 days after Feb. 19, 1948.

SHORT TITLE

Congress in enacting act Feb. 19, 1948, cited to text, which constitutes this chapter, provided by section 1 of said act Feb. 19, 1948, that it should be popularly known as the "Armed Services Procurement Act of 1947."

REPEALS

Section 11 (d) of act Feb. 19, 1948, cited to text, provided: "All other laws and parts of laws to the extent that they are inconsistent with this Act [this chapter] are hereby repealed."

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers,

agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 1 and 3 of Title 14, Coast Guard.

§ 152. Advertisements for bids; time; opening of bids; award or rejection of bids.

Whenever advertising is required—

(a) The advertisement for bids shall be a sufficient time previous to the purchase or contract, and specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

(b) All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided*, That all bids may be rejected when the agency head determines that it is in the public interest so to do. (Feb. 19, 1948, ch. 65, § 3, 62 Stat. 22.)

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 153. Types of contracts—(a) Discretion of agency head; warranty clause.

Except as provided in subsection (b) of this section, contracts negotiated pursuant to section 151 (c) of this title may be of any type which in the opinion of the agency head will promote the best interests of the Government. Every contract negotiated pursuant to section 151 (c) of this title shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business, for the breach or violation of which warranty the Government shall have the right to annul such contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

(b) Exclusion of cost-plus-a-percentage-of-cost contracts; regulations governing cost-plus-a-fixed-fee contracts.

The cost-plus-a-percentage-of-cost system of contracting shall not be used, and in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the agency head at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such

contract for experimental, developmental, or research work and that a fee inclusive of the contractor's costs and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the agency head at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility project). Neither a cost nor a cost-plus-a-fixed-fee contract nor an incentive-type contract shall be used unless the agency head determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure supplies or services of the kind or quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract. All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract thereunder on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either \$25,000 or 5 per centum of the total estimated cost of the prime contract; and a procuring agency, through any authorized representative thereof, shall have the right to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

(c) Examination of books, records, etc., of contractors; time limitation.

All contracts negotiated without advertising pursuant to authority contained in this chapter shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall until the expiration of three years after final payment have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. (Feb. 19, 1948, ch. 65, § 4, 62 Stat. 23, amended Oct. 31, 1951, ch. 652, 65 Stat. 700.)

AMENDMENTS

1951—Subsec. (c) added by act Oct. 31, 1951.

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 154. Advance payments under negotiated contracts; terms.

(a) The agency head may make advance payments under negotiated contracts heretofore or hereafter executed in any amount not exceeding the contract price upon such terms as the parties shall agree: *Provided*, That advance payments shall be made only upon adequate security and if the agency head determines that provision for such advance payments is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract.

(b) The terms governing advance payments may include as security provision for, and upon inclusion of such provision there shall thereby be created,

a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited and upon such of the material and other property acquired for performance of the contract as the parties shall agree. (Feb. 19, 1948, ch. 65, § 5, 62 Stat. 23.)

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 155. Remission of liquidated damages.

Whenever any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision for liquidated damages for delay, the Comptroller General on the recommendation of the agency head is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable. (Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24.)

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 156. Determinations and decisions—(a) Powers of agency head; finality; delegation.

The determinations and decisions provided in this chapter to be made by the agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (b) of this section, the agency head is authorized to delegate his powers provided by this chapter, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the agency.

(b) Non-delegable powers; delegation to chief procurement officer only.

The power of the agency head to make the determinations or decisions specified in paragraphs (12)–(16) of section 151 (c) of this title and in section 154 (a) of this title shall not be delegable, and the power to make the determinations or decisions specified in paragraph (11) of section 151 (c) of this title shall be delegable only to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than \$25,000.

(c) Written decisions; finality; availability for six years; copy to General Accounting Office.

Each determination or decision required by paragraphs (11)–(15), or (16) of section 151 (c) of this title, by section 153 of this title or by section 154 (a) of this title shall be based upon written findings made by the official making such determination, which findings shall be final and shall be available within the agency for a period of at least six years following the date of the determination. A copy of the findings shall be submitted to the General Accounting Office with the contract.

(d) Preservation of data of negotiations.

In any case where any purchase or contract is negotiated pursuant to the provisions of section 151 (c) of this title, except in a case covered by paragraphs (2)–(5) or (6) of section 151 (c) of this title,

the data with respect to the negotiation shall be preserved in the files of the agency for a period of six years following final payment on such contract. (Feb. 19, 1948, ch. 65, § 7, 62 Stat. 24.)

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 157. Exemption of purchases or contracts from certain other provisions of law.

No purchase or contract shall be exempt from sections 35–40 of this title or from sections 276a to 276a–6 of Title 40, solely by reason of having been entered into pursuant to section 151 (c) of this title without advertising, and the provisions of sections 35–40 of this title and sections 276a to 276a–6 of Title 40 and of sections 324 and 325a of Title 40, if otherwise applicable, shall apply to such purchases and contracts. (Feb. 19, 1948, ch. 65, § 8, 62 Stat. 24.)

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 158. Definitions.

As used in this chapter—

(a) The term “agency head” shall mean the Secretary, Under Secretary (if any), or any Assistant Secretary of the Army, of the Navy, or of the Air Force; the Commandant, United States Coast Guard, Treasury Department; and the Executive Secretary, National Advisory Committee for Aeronautics, respectively.

(b) The term “supplies” shall mean all property except land, and shall include, by way of description and without limitation, public works, buildings, facilities, ships, floating equipment, and vessels of every character, type and description, aircraft, parts, accessories, equipment, machine tools and alteration or installation thereof. (Feb. 19, 1948, ch. 65, § 9, 62 Stat. 24.)

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, § 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 159. Assignment and delegation of joint procurement responsibilities by agency head; limitations; allocation of appropriations.

In order to facilitate the procurement of supplies and services by each agency for others and the joint procurement of supplies and services required by such agencies, subject to the limitations contained in section 156 of this title, each agency head may

make such assignments and delegations of procurement responsibilities within his agency as he may deem necessary or desirable, and the agency heads or any of them by mutual agreement may make such assignments and delegations of procurement responsibilities from one agency to any other or to officers or civilian employees of any such agency, and may create such joint or combined offices to exercise such procurement responsibilities, as they may deem necessary or desirable. Appropriations available to any such agency shall be available for obligation for procurement as provided for in such appropriations by any other agency through administrative allotments in such amount as may be authorized by the head of the allotting agency without transfer of funds on the books of the Treasury Department. Disbursing officers of the allotting agency may make disbursements chargeable to such allotments upon vouchers certified by officers or civilian employees of the procuring agency. (Feb. 19, 1948, ch. 65, § 10, 62 Stat. 25.)

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 160. Sections inapplicable to procurement of supplies and services.

The following sections shall not apply to the procurement of supplies or services by the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Coast Guard, Treasury Department, or the National Advisory Committee for Aeronautics:

Sections 5, 6, 6a, and 13 of this title. (Feb. 19, 1948, ch. 65, § 11 (b), 62 Stat. 25.)

REFERENCES IN TEXT

Section 6 of this title, referred to in text of this section, was repealed by act Oct. 31, 1951, ch. 654, § 1 (98-105), 65 Stat. 705.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

§ 161. Concurrent authority of Secretaries of Army, Navy, and Air Force.

The Secretary of the Navy shall have the same authority with respect to contracts of the Department of the Navy as the Secretary of the Army has with respect to contracts of the Department of the Army under section 218 of Title 5. The Secretary of the

Army and the Secretary of the Air Force shall have the same authority with respect to emergency purchases of war material abroad as the Secretary of the Navy has with respect to such purchases under section 568 of Title 34. (Feb. 19, 1948, ch. 65, § 12, 62 Stat. 26.)

CODIFICATION

The first sentence of this section constitutes section 412b of Title 5, Executive Departments and Government Officers and Employees, and the second sentence is set out as sections 219b and 626e of Title 5, Executive Departments and Government Officers and Employees.

CROSS REFERENCES

Effective date, see note set out under section 151 of this title.

Chapter 4.—PROCUREMENT PROCEDURES [NEW]

Sec.

- 251. Declaration of purpose of this chapter.
- 252. Purchases and contracts for supplies.
 - (a) Applicability of chapter; delegation of authority.
 - (b) Small business concerns; share of business; advance publicity on negotiated purchases and contracts for supplies.
 - (c) Negotiated purchases and contracts for supplies; conditions.
 - (d) Bids in violation of antitrust laws.
 - (e) Exceptions to section.
- 253. Advertising requirements.
- 254. Negotiated contracts.
 - (a) Requirements.
 - (b) Barred contracts; fee limitation; determination of use; advance notification.
 - (c) Examination of books, records, etc., of contractors; time limitation.
- 255. Advance payments on negotiated contracts; governing terms.
- 256. [Repealed].
- 256a. Waiver of liquidated damages [New].
- 257. Administrative determinations.
 - (a) Conclusiveness; delegation of powers.
 - (b) Nondelegable powers; powers delegable to certain persons.
 - (c) Basis of determinations; finding conclusive; preservation of findings; copy.
 - (d) Preservation of data.
- 258. Laws applicable to contracts.
- 259. Definitions.
- 260. Laws not applicable to contracts.

§§ 201—205.

Sections 201—205 have been transferred to sections 471—475, respectively, of Title 40, Public Buildings, Property, and Works.

§§ 211—219.

Sections 211—213 have been transferred to sections 630—630b, respectively, of Title 5, Executive Departments and Government Officers and Employees.

Section 214 has been transferred to section 391 of Title 44, Public Printing and Documents.

Sections 215—219 have been transferred to sections 630c—630g, respectively, of Title 5, Executive Departments and Government Officers and Employees.

§§ 231—240.

Sections 231, 231a—237 have been transferred to sections 481—488, respectively, of title 40, Public Buildings, Property, and Works.

Section 238 has been transferred to section 630h of Title 5, Executive Departments and Government Officers and Employees.

Sections 239, 239a, 239b and 240 have been transferred to sections 489—492, respectively, of Title 40, Public Buildings, Property, and Works.