§ 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.


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<td>40112(j)</td>
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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.

### Amendments


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

### Effective Date of 1996 Amendment