Calendar No. 451

103D CONGRESS
2D SESSION

S. 1587

[Report No. 103–258]
[Report No. 103–259]

A BILL

To revise and streamline the acquisition laws of the Federal Government, and for other purposes.

MAY 25 (legislative day, MAY 16), 1994

Committee on Small Business discharged and ordered placed on the Calendar

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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To revise and streamline the acquisition laws of the Federal Government, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 13), 1993

Mr. GLENN (for himself, Mr. BINGAMAN, Mr. LEVIN, Mr. NUNN, Mr. BUMPERS, Mr. LIEBERMAN, Mr. ROTH, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

NOVEMBER 1 (legislative day, OCTOBER 13), 1993

Ordered, that if and when reported from the Committee on Governmental Affairs, the bill be referred to the Committee on Armed Services for not to exceed 30 session days, with instructions that if the Committee on Armed Services does not report the bill within that time period, they be deemed discharged from further consideration of the bill and it be referred to the Committee on Small Business for not to exceed 20 session days, solely for consideration of title IV of the introduced bill, with instructions that if the Committee on Small Business does not report the bill within that time period they be deemed discharged from further consideration of the bill and it be placed on the calender

MAY 11 (legislative day, MAY 2), 1994

Reported by Mr. GLENN, with an amendment; referred to the Committee on Armed Services pursuant to the order of November 1, 1993

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 12 (legislative day, MAY 2), 1994

Reported by Mr. NUNN, without amendment, referred to the Committee on Small Business pursuant to the order of November 1, 1993

MAY 25 (legislative day, MAY 16), 1994
Committee on Small Business discharged and ordered placed on the calendar

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A BILL

To revise and streamline the acquisition laws of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the ''Federal Acquisition Streamlining Act of 1993''.~~

~~SEC. 2. TABLE OF CONTENTS.~~

~~The table of contents for this Act is as follows:~~

~~Sec. 1. Short title.~~
~~Sec. 2. Table of contents.~~

~~TITLE I—CONTRACT FORMATION~~

~~Subtitle A—Competition Statutes~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~SUBPART A—COMPETITION REQUIREMENTS~~

~~Sec. 1001. References to Federal Acquisition Regulation.~~
~~Sec. 1002. Exclusion of particular sources.~~
~~Sec. 1003. Approval for use of noncompetitive procedures.~~
~~Sec. 1004. Reference to head of a contracting activity.~~
~~Sec. 1005. Task and delivery order contracts.~~

~~SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD~~

~~Sec. 1011. Source selection factors.~~
~~Sec. 1012. Solicitation provision regarding evaluation of purchase options.~~
~~Sec. 1013. Prompt notice of award.~~
~~Sec. 1014. Post-award debriefings.~~
~~Sec. 1015. Protest file.~~
~~Sec. 1016. Award of costs and fees in agency settlement of protests.~~

~~SUBPART C—KINDS OF CONTRACTS~~

~~Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.~~
~~Sec. 1022. Technical and conforming amendments.~~

~~SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION~~

~~Sec. 1031. Encouragement of competition and cost savings.~~
~~Sec. 1032. Repeal of requirement for annual report by advocates for competition.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~SUBPART A—COMPETITION REQUIREMENTS~~

~~Sec. 1051. References to Federal Acquisition Regulation.~~
~~Sec. 1052. Exclusion of particular sources.~~
~~Sec. 1053. Approval for use of noncompetitive procedures.~~
~~Sec. 1054. Reference to head of a contracting activity.~~
~~Sec. 1055. Task and delivery order contracts.~~

~~SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD~~

~~Sec. 1061. Solicitation, evaluation, and award.~~
~~Sec. 1062. Solicitation provision regarding evaluation of purchase options.~~
~~Sec. 1063. Prompt notice of award.~~
~~Sec. 1064. Post-award debriefings.~~
~~Sec. 1065. Protest file.~~
~~Sec. 1066. Award of costs and fees in agency settlement of protests.~~

~~SUBPART C—KINDS OF CONTRACTS~~

~~Sec. 1071. Agency head determination regarding use of cost type or incentive contract.~~

~~PART III—ACQUISITIONS GENERALLY~~

~~Sec. 1091. Repeal of requirement for annual report on competition.~~

~~Subtitle B—Truth in Negotiations~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 1201. Stabilization of dollar threshold of applicability.~~
~~Sec. 1202. Exceptions to cost or pricing data requirements.~~
~~Sec. 1203. Limitation on authority to require a submission not otherwise required.~~
~~Sec. 1204. Additional special rules for commercial items.~~
~~Sec. 1205. Right of United States to examine contractor records.~~

~~Sec. 1206. Required regulations.~~
~~Sec. 1207. Consistency of time references.~~
~~Sec. 1208. Repeal of superseded provision.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.~~
~~Sec. 1252. Repeal of obsolete provision.~~

~~Subtitle C—Research and Development~~

~~Sec. 1301. Delegation of contracting authority.~~
~~Sec. 1302. Research projects.~~
~~Sec. 1303. Elimination of inflexible terminology regarding coordination and communication of defense research activities.~~

~~Subtitle D—Procurement Protests~~

~~PART I—PROTESTS TO THE COMPTROLLER GENERAL~~

~~Sec. 1401. Protest defined.~~
~~Sec. 1402. Review of protests and effect on contracts pending decision.~~
~~Sec. 1403. Decisions on protests.~~
~~Sec. 1404. Regulations.~~

~~PART II—PROTESTS IN THE FEDERAL COURTS~~

~~Sec. 1421. Nonexclusivity of remedies.~~
~~Sec. 1422. Jurisdiction of the United States Court of Federal Claims.~~

~~PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING~~

~~Sec. 1431. Revocation of delegations of procurement authority.~~
~~Sec. 1432. Authority of the General Services Administration Board of Contract Appeals.~~
~~Sec. 1433. Periods for certain actions.~~
~~Sec. 1434. Dismissals of protests.~~
~~Sec. 1435. Award of costs.~~
~~Sec. 1436. Dismissal agreements.~~
~~Sec. 1437. Jurisdiction of district courts.~~
~~Sec. 1438. Matters to be covered in regulations.~~
~~Sec. 1439. Definitions.~~
~~Sec. 1440. Oversight of acquisition of automatic data processing equipment by Federal agencies.~~

~~Subtitle E—Definitions and Other Matters~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 1501. Definitions.~~
~~Sec. 1502. Delegation of procurement functions.~~
~~Sec. 1503. Determinations and decisions.~~
~~Sec. 1504. Undefinitized contractual actions: restrictions.~~
~~Sec. 1505. Production special tooling and production special test equipment: contract terms and conditions.~~
~~Sec. 1506. Regulations for bids.~~

~~Sec. 1507. Repeal of executed requirement relating to certificate of independent price determination in certain Department of Defense contract solicitations.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~Sec. 1551. Definitions.~~
~~Sec. 1552. Delegation of procurement functions.~~
~~Sec. 1553. Determinations and decisions.~~
~~Sec. 1554. Undefinitized contractual actions: restrictions.~~
~~Sec. 1555. Repeal of amendments to uncodified title.~~

~~TITLE II—CONTRACT ADMINISTRATION~~

~~Subtitle A—Contract Payment~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 2001. Contract financing.~~
~~Sec. 2002. Contracts: vouchering procedures.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~Sec. 2051. Contract financing.~~

~~Subtitle B—Cost Principles~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 2101. Allowable contract costs.~~
~~Sec. 2102. Contract profit controls during emergency periods.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~Sec. 2151. Allowable contract costs.~~

~~PART III—ACQUISITIONS GENERALLY~~

~~Sec. 2191. Travel expenses of government contractors.~~

~~Subtitle C—Audit and Access to Records~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 2201. Consolidation and revision of authority to examine records of contractors.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~Sec. 2251. Authority to examine records of contractors.~~

~~Subtitle D—Cost Accounting Standards~~

~~Sec. 2301. Repeal of obsolete deadline regarding procedural regulations for the Cost Accounting Standards Board.~~

~~Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 2401. Procurement of critical aircraft and ship spare parts; quality control.~~
~~Sec. 2402. Contractor guarantees regarding weapon systems.~~
~~Sec. 2403. Repeal of requirement for complete delivery of subsistence supplies at specific place upon inspection.~~

~~PART II—ACQUISITIONS GENERALLY~~

~~Sec. 2451. Section 3737 of the Revised Statutes: expansion of authority to prohibit setoffs against assignees; reorganization of section; revision of obsolete provisions.~~
~~Sec. 2452. Repeal of requirement for deposit of contracts with GAO.~~

~~Subtitle F—Claims and Disputes~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Sec. 2501. Certification of contract claims.~~

~~PART II—ACQUISITIONS GENERALLY~~

~~Sec. 2551. Concurrent jurisdiction of United States district courts under the Little Tucker Act.~~
~~Sec. 2552. Contract Disputes Act improvements.~~

~~TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES~~

~~Subtitle A—Major Systems Statutes~~

~~Sec. 3001. Requirement for independent cost estimates and manpower estimates before development or production.~~
~~Sec. 3002. Enhanced program stability.~~
~~Sec. 3003. Repeal of requirement for Defense Enterprise Programs.~~
~~Sec. 3004. Repeal of requirement for competitive prototyping in major programs.~~
~~Sec. 3005. Repeal of requirement for competitive alternative sources in major programs.~~

~~Subtitle B—Testing Statutes~~

~~Sec. 3011. Repeal of testing requirement for wheeled or tracked vehicles.~~
~~Sec. 3012. Major systems and munitions programs: survivability and lethality testing.~~
~~Sec. 3013. Operational test and evaluation of defense acquisition programs.~~
~~Sec. 3014. Low-rate initial production of new systems.~~

~~Subtitle C—Service Specific Laws~~

~~Sec. 3021. Industrial mobilization.~~
~~Sec. 3022. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.~~
~~Sec. 3023. Procurement for experimental purposes.~~
~~Sec. 3024. Repeal of authority for procurement of production equipment.~~
~~Sec. 3025. Availability of Department of Defense samples, drawings, information, equipment, materials, and certain services.~~
~~Sec. 3026. Repeal of duplicative general procurement authority.~~
~~Sec. 3027. Repeal of authority to delegate the procurement of Army rations.~~

~~Sec. 3028. Repeal of authority to purchase exceptional subsistence supplies without advertising.~~

~~Sec. 3029. Repeal of authority to obtain assistance of United States mapping agencies.~~

~~Sec. 3030. Repeal of authority to reclaim unserviceable ammunition.~~

~~Sec. 3031. Gratuitous services of officers of certain reserve components.~~

~~Sec. 3032. Civil Reserve Air Fleet.~~

~~Sec. 3033. Repeal of Navy authority regarding research and development, procurement, and construction of guided missiles.~~

~~Sec. 3034. Exchange of scientific personnel.~~

~~Sec. 3035. Repeal of authority for Secretary of the Navy to provide temporary relief for contractors and contractor employees from losses caused by enemy action.~~

~~Sec. 3036. Repeal of authority for Secretary of the Navy to sell degaussing equipment.~~

~~Sec. 3037. Repeal of authority for alternative use of appropriations for construction or conversion of vessels.~~

~~Sec. 3038. Repeal of authority for conversion of combatant and auxiliary naval vessels.~~

~~Sec. 3039. Construction of combatant and escort vessels and assignment of vessel projects.~~

~~Sec. 3040. Repeal of requirement for estimates in connection with bids on construction of naval vessels.~~

~~Sec. 3041. Repeal of requirement for construction of vessels on Pacific coast.~~

~~Sec. 3042. Fitness of naval vessels: examination; striking unfit vessels; disposal.~~

~~Sec. 3043. Repeal of policy on constructing combatant vessels.~~

~~Sec. 3044. Naval salvage facilities.~~

~~Subtitle D—Department of Defense Commercial and Industrial Activities~~

~~Sec. 3051. Factories and arsenals: manufacture at.~~

~~Sec. 3052. Accounting requirement for contracted advisory and assistance services.~~

~~Subtitle E—Fuel- and Energy-Related Laws~~

~~Sec. 3061. Liquid fuels and natural gas: contracts for storage, handling, or distribution.~~

~~Sec. 3062. Acquisition of petroleum and natural gas: authority to waive procedures.~~

~~Subtitle F—Fiscal Statutes~~

~~Sec. 3071. Disbursement of funds of military department to cover obligations of another agency of Department of Defense.~~

~~Subtitle G—Miscellaneous~~

~~Sec. 3081. Obligation of funds: limitation.~~

~~Sec. 3082. Repeal of provisions for the encouragement of aviation.~~

~~Sec. 3083. Repeal of requirements regarding product evaluation activities.~~

~~Sec. 3084. Repeal of price adjustment authority and purchase authority relating to the procurement of milk.~~

~~Sec. 3085. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.~~

~~TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS~~

~~Subtitle A—Simplified Acquisition Threshold~~

~~PART I—ESTABLISHMENT OF THRESHOLD~~

~~Sec. 4001. Simplified acquisition threshold.~~

~~PART II—SIMPLIFICATION OF PROCEDURES~~

~~Sec. 4011. Simplified acquisition procedures.~~
~~Sec. 4012. Small business reservation.~~
~~Sec. 4013. Procurement notice.~~

~~PART III—INAPPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD~~

~~SUBPART A—GENERALLY~~

~~Sec. 4021. Inapplicability of future enacted procurement laws to contracts not exceeding the simplified acquisition threshold.~~

~~SUBPART B—ARMED SERVICES ACQUISITIONS~~

~~Sec. 4031. Inapplicability of requirement for contract clause regarding contingent fees.~~
~~Sec. 4032. Inapplicability of prohibition on limiting subcontractor direct sales to the United States.~~
~~Sec. 4033. Inapplicability of authority to examine books and records of contractors.~~
~~Sec. 4034. Inapplicability of requirement to identify suppliers and sources of supplies.~~
~~Sec. 4035. Inapplicability of prohibition against doing business with certain offerors or contractors.~~
~~Sec. 4036. Inapplicability of preference for use of United States vessels for transporting supplies of the Armed Forces.~~

~~SUBPART C—CIVILIAN AGENCY ACQUISITIONS~~

~~Sec. 4041. Inapplicability of requirement for contract clause regarding contingent fees.~~
~~Sec. 4042. Inapplicability of prohibition on limiting subcontractor direct sales to the United States.~~
~~Sec. 4043. Inapplicability of authority to examine books and records of contractors.~~

~~SUBPART D—ACQUISITIONS GENERALLY~~

~~Sec. 4051. Inapplicability of limitation on use of funds to influence certain Federal actions.~~
~~Sec. 4052. Inapplicability of requirement for contract clause relating to kickbacks.~~
~~Sec. 4053. Inapplicability of the Miller Act to contracts below the simplified acquisition threshold.~~
~~Sec. 4054. Inapplicability of Contract Work Hours and Safety Standards Act.~~
~~Sec. 4055. Inapplicability of the Drug-Free Workplace Act of 1988.~~

~~Sec. 4056. Inapplicability of a requirement in the Merchant Marine Act, 1936, to ship on American-flag commercial vessels.~~
~~Sec. 4057. Inapplicability of certain procurement integrity requirements.~~

~~PART IV—CONFORMING AMENDMENTS~~

~~Sec. 4071. Armed services acquisitions.~~
~~Sec. 4072. Civilian agency acquisitions.~~
~~Sec. 4073. Office of Federal Procurement Policy Act.~~
~~Sec. 4074. Small Business Act.~~

~~PART V—REVISION OF REGULATIONS~~

~~Sec. 4081. Revision required.~~

~~**Subtitle B—Socioeconomic and Small Business Laws**~~

~~Sec. 4101. Armed services acquisitions.~~
~~Sec. 4102. Acquisitions generally.~~
~~Sec. 4103. Direct contracting with small businesses.~~

~~**Subtitle C—Miscellaneous Acquisition Laws**~~

~~Sec. 4151. Repeal of obsolete laws relating to procurement of naval aircraft and components.~~
~~Sec. 4152. Revision and codification of prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.~~
~~Sec. 4153. Restriction on use of noncompetitive procedures for procurement from a particular source.~~

~~**TITLE V—INTELLECTUAL PROPERTY**~~

~~**Subtitle A—Technology Transfer**~~

~~Sec. 5001. Copyright protection for computer programs of the Federal Government.~~
~~Sec. 5002. Use of copyrighted works of the Federal Government.~~
~~Sec. 5003. Distribution of royalties received by Federal agencies.~~
~~Sec. 5004. Exception to prohibition on copyright protection for works of the Federal Government.~~

~~**Subtitle B—Government Use of Private Patents, Copyrights, and Trade Secrets**~~

~~Sec. 5011. Government use or manufacture of a patented invention.~~
~~Sec. 5012. Department of Defense acquisition of intellectual property rights.~~

~~**TITLE VI—STANDARDS OF CONDUCT**~~

~~**Subtitle A—Ethics Provisions**~~

~~Sec. 6001. Amendments to Office of Federal Procurement Policy Act.~~
~~Sec. 6002. Amendments to title 18, United States Code.~~
~~Sec. 6003. Repeal of superseded and obsolete laws.~~
~~Sec. 6004. Implementation.~~

~~**Subtitle B—Additional Amendments**~~

~~Sec. 6051. Contracting functions performed by Federal personnel.~~
~~Sec. 6052. Repeal of executed requirement for study and report.~~
~~Sec. 6053. Waiting period for significant changes proposed for acquisition regulations.~~

~~TITLE VII—DEFENSE TRADE AND COOPERATION~~

~~Sec. 7001. Purchases of foreign goods.~~
~~Sec. 7002. International cooperative agreements.~~
~~Sec. 7003. Acquisition, cross-servicing agreements, and standardization.~~

~~TITLE VIII—COMMERCIAL ITEMS~~

~~Sec. 8001. Definitions.~~
~~Sec. 8002. Preference for acquisition of commercial items and nondevelopmental items.~~
~~Sec. 8003. Acquisition of commercial items.~~
~~Sec. 8004. Class waiver of applicability of certain laws.~~
~~Sec. 8005. Inapplicability of certain provisions of law.~~
~~Sec. 8006. Flexible deadlines for submission of offers of commercial items.~~
~~Sec. 8007. Advocate for Acquisition of Commercial and Nondevelopmental Items.~~
~~Sec. 8008. Provisions not affected.~~
~~Sec. 8009. Comptroller General review of Federal Government use of market research.~~

~~TITLE IX—EFFECTIVE DATE~~

~~Sec. 9001. Effective date.~~

~~TITLE I—CONTRACT FORMATION~~

~~Subtitle A—Competition Statutes~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~Subpart A—Competition Requirements~~

~~SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGULATION.~~

~~Section 2304 of title 10, United States Code, is amended—~~

~~(1) in subsection (a)(1)(A), by striking out ''modifications'' and all that follows through ''note)'' and inserting in lieu thereof ''Federal Acquisition Regulation''; and~~

~~(2) in subsection (g)(1), by striking out ''regulations modified'' and all that follows through ''note)'' and inserting in lieu thereof ''Federal Acquisition Regulation''.~~

~~SEC. 1002. EXCLUSION OF PARTICULAR SOURCES.~~

~~Section 2304(b) of title 10, United States Code, is amended—~~

~~(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;~~

~~(2) by inserting after paragraph (1) the following new paragraph (2):~~

~~''(2) The determination required of the head of an agency in paragraph (1) may not be made for a class of purchases or contracts.''; and~~

~~(3) in paragraph (4), as redesignated by paragraph (1), by striking out ''paragraphs (1) and (2)'' and inserting in lieu thereof ''paragraphs (1) and (3)''.~~

~~SEC. 1003. APPROVAL FOR USE OF NONCOMPETITIVE PROCEDURES.~~

~~Section 2304(f)(1)(B)(i) of title 10, United States Code, is amended by inserting before the semicolon at the end the following: ''or by an official referred to in clause (ii), (iii), or (iv)''.~~

~~SEC. 1004. REFERENCE TO HEAD OF A CONTRACTING ACTIVITY.~~

~~Section 2304(f) of title 10, United States Code, is amended—~~

~~(1) in paragraph (1)(B)(ii)—~~

~~(A) by striking out ''head of the procuring activity'' and inserting in lieu thereof ''head of the contracting activity''; and~~

~~(B) by striking out ''head of the procuring activity's'' and inserting in lieu thereof ''head of the contracting activity's''; and~~

~~(2) in paragraph (6)(A), by striking out ''head of a procuring activity'' and inserting in lieu thereof ''head of a contracting activity''.~~

~~SEC. 1005. TASK AND DELIVERY ORDER CONTRACTS.~~

~~(a) AUTHORITY.—~~

~~(1) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2304 the following new section:~~

~~''§ 2304a. Task and delivery order contracts~~

~~''(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, the head of an agency may enter into a contract that does not procure or specify a firm quantity of supplies or services (other than a minimum or maximum quantity) and that provides for the issuance of delivery orders or task orders during the speci-~~

~~fied period of the contract. The head of an agency may enter into such a contract only under the authority of this section.~~

~~"(b) LIMITATION ON CONTRACT PERIOD.—The period of a contract referred to in subsection (a), including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 3 years, except that, when multiple contracts are awarded under subsection (c)(4) pursuant to the same solicitation, the period of each such contract may exceed 3 years but may not exceed 5 years.~~

~~"(c) AWARD PROCEDURES.—(1) The head of an agency may use procedures other than competitive procedures to enter into a contract referred to in subsection (a) only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.~~

~~"(2) The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed contract in a manner that would reasonably enable a potential offeror~~

~~to decide whether to request the solicitation and consider submitting an offer.~~

~~"(3) The solicitation shall include the following:~~

~~"(A) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.~~

~~"(B) The maximum quantity or dollar value of supplies or services to be procured under the contract.~~

~~"(C) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the supplies or services to be procured under the contract.~~

~~"(4)(A) The head of an agency may, on the basis of one solicitation, award separate contracts under this section for the same or similar supplies or services to two or more sources if the solicitation states that the head of the agency has the option to do so.~~

~~"(B) In any solicitation for an advisory and assistance services contract for a period in excess of 1 year, or for an amount (including all options) in excess of $10,000,000, the head of an agency shall include a statement that the head of the agency reserves the option—~~

~~"(i) to award separate contracts under subparagraph (A); or~~

~~"(ii) to award only one contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.~~

~~"(5) A contract referred to in subsection (a) shall contain the same information that is required by paragraph (3) to be included in the solicitation of offers for that contract.~~

~~"(d) ORDERS.—(1) The following actions are not required for a delivery order or task order issued under a contract entered into in accordance with this section:~~

~~"(A) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).~~

~~"(B) Except as provided in paragraph (2), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.~~

~~"(2)(A) When multiple contracts are awarded under subsection (c)(4), each delivery order or task order issued under such contracts shall be competed among all of the~~

~~contractors awarded such contracts unless the contracting officer determines in writing that—~~

~~"(i) the agency's need for the supplies or services ordered is of such unusual urgency that competition would result in unacceptable delays in fulfilling the agency's needs;~~

~~"(ii) the supplies or services ordered are so unique or highly specialized that only one such contractor is capable of providing the supplies or services required at the level of quality required; or~~

~~"(iii) the delivery order or task order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a delivery order or task order already issued on a competitive basis.~~

~~"(B) When a delivery order or task order is competed pursuant to subparagraph (A), the order shall include a statement of work that clearly specifies all tasks to be performed under the order.~~

~~"(3) A protest is not authorized in connection with the issuance, proposed issuance, or competing of a delivery order or task order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.~~

~~''(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT.—(1) A delivery order or task order may not increase the scope, period, or maximum value of the contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.~~

~~''(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.~~

~~''(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).~~

~~''(f) TASK ORDER OMBUDSMAN.—Each head of an agency who awards multiple contracts under subsection (c)(4) shall appoint or designate a task order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that task orders are issued on a competitive basis when required under subsection (d)(2). The task order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2304 the following new item:~~

~~"2304a. Task and delivery order contracts.".~~

~~(b) REPEAL OF SUPERSEDED PROVISION.—Section 2304 of title 10, United States Code, is amended by striking out subsection (j).~~

~~(c) CONFORMING AMENDMENT FOR PROFESSIONAL AND TECHNICAL SERVICES.—Section 2331 of title 10, United States Code, is amended by striking out subsection (c).~~

~~Subpart B—Planning, Solicitation, Evaluation, and Award~~

~~SEC. 1011. SOURCE SELECTION FACTORS.~~

~~Section 2305(a) of title 10, United States Code, is amended—~~

~~(1) in paragraph (2)—~~

~~(A) in subparagraph (A)(i), by striking out "nonprice-related factors)" and inserting in lieu thereof "nonprice-related factors and subfactors)"; and~~

~~(B) in subparagraph (B)(ii), by striking out subclause (I) and inserting in lieu thereof the following:~~

~~"(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and"; and~~

~~(2) by striking out paragraph (3) and inserting in lieu thereof the following:~~

~~"(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—~~

~~"(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror);~~

~~"(ii) shall include cost or price to the Government as an evaluation factor that must be considered in the evaluation of proposals; and~~

~~''(iii) shall disclose to offerors whether all evaluation factors other than price or cost, when combined, are—~~

~~''(I) significantly more important than price or cost;~~

~~''(II) approximately equal in importance to price or cost; or~~

~~''(III) significantly less important than price or cost.~~

~~''(B) Nothing in this paragraph prohibits an agency from—~~

~~''(i) providing additional information in a solicitation, including numeric weights for all evaluation factors; or~~

~~''(ii) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest price or cost.''.~~

~~SEC. 1012. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.~~

~~(a) OPTIONS FOR ADDITIONAL PURCHASES. Subsection (a) of section 2305 of title 10, United States Code, as amended by section 1011, is further amended by adding at the end the following new paragraph:~~

~~''(4) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices under the contract for options to purchase additional supplies or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.''.~~

~~(b) REPEAL OF SUPERSEDED PROVISION.—Section 2301(a) of such title is amended—~~

~~(1) by striking out paragraph (7);~~

~~(2) by inserting ''and'' at the end of paragraph (5); and~~

~~(3) by striking out ''; and'' at the end of paragraph (6) and inserting in lieu thereof a period.~~

~~SEC. 1013. PROMPT NOTICE OF AWARD.~~

~~(a) SEALED BID PROCEDURES.—Section 2305(b)(3) of title 10, United States Code, is amended by adding at the end the following: ''Within 3 days after the date of contract award, the head of the agency shall notify all offerors not awarded the contract that the contract has been awarded.''.~~

~~(b) COMPETITIVE PROPOSALS PROCEDURES.—Section 2305(b)(4)(B) of title 10, United States Code, is amended in the second sentence by striking out ''shall~~

~~promptly notify'' and inserting in lieu thereof '', within 3 days after the date of contract award, shall notify''.~~

~~SEC. 1014. POST-AWARD DEBRIEFINGS.~~

~~Section 2305(b) of title 10, United States Code, is amended—~~

~~(1) by redesignating paragraph (5) as paragraph (6); and~~

~~(2) by inserting after paragraph (4) the following new paragraph (5):~~

~~''(5)(A) When a contract is awarded by an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 7 days after the date of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An employee of the agency shall debrief the offeror within 7 days after receipt of the request by the agency.~~

~~''(B) The debriefing shall provide the offeror with—~~

~~''(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;~~

~~''(ii) the overall evaluated cost of the offer of the contractor awarded the contract and the overall evaluated cost of the offer of the debriefed offeror;~~

~~''(iii) the overall ranking of all offers and the total technical and cost scores of all offers;~~

~~"(iv) a summary of the rationale for the award;~~

~~"(v) in the case of a proposal that incorporates equipment that is a commercial item, the make and model of the item incorporated in the offer of the contractor awarded the contract; and~~

~~"(vi) reasonable responses to questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.~~

~~"(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552 of title 5, including information relating to—~~

~~"(i) trade secrets;~~

~~"(ii) privileged or confidential manufacturing processes and techniques; and~~

~~"(iii) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.~~

~~"(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.~~

~~''(E) If, within one year after the date of the contract award and as a result of a successful procurement protest or otherwise, the agency seeks to fulfill the requirement under the contract either on the basis of a new solicitation of offers or on the basis of the best and final offers considered in the awarding of that contract, the agency shall provide each such offeror with—~~

~~''(i) all information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and~~

~~''(ii) all comparable information with respect to the original offerors.~~

~~''(F) The contracting officer shall include a summary of the debriefing in the contract file.''.~~

~~SEC. 1015. PROTEST FILE.~~

~~Section 2305 of title 10, United States Code, is amended by adding at the end the following:~~

~~''(e)(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the contracting activity and reasonable access shall be provided to actual or prospective offerors.~~

~~''(2) Information exempt from disclosure under the section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.~~

~~''(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).''.~~

~~SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLEMENT OF PROTESTS.~~

~~Section 2305 of title 10, United States Code, as amended by section 1015, is further amended by adding at the end the following new subsection:~~

~~''(f) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not satisfy the requirements of law or regulation, the head of the agency may take any action set out in subparagraphs (A) through (F) of section 3554(b)(1) of title 31.''.~~

Subpart C—Kinds of Contracts

SEC. 1021. SECRETARIAL DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Subsection (c) of section 2306 of title 10, United States Code, is repealed.

SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REPEAL OF UNNECESSARY CROSS REFERENCE.—Subsection (f) of section 2306 of title 10, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—Such section is amended by redesignating subsections (d), (e), (g), and (h) as subsections (c), (d), (e), and (f), respectively.

(c) NEUTERIZATION OF REFERENCE.—Subsection (e)(1) of such section, as redesignated by subsection (b), is amended in the matter above clause (i) by striking out ''whenever he finds'' and inserting in lieu thereof ''whenever the head of the agency finds''.

Subpart D—Miscellaneous Provisions for the Encouragement of Competition

SEC. 1031. ENCOURAGEMENT OF COMPETITION AND COST SAVINGS.

(a) TRANSFER.—The text of section 2317 of title 10, United States Code—

(1) is amended—

~~(A) by striking out ''The Secretary of Defense'' and inserting in lieu thereof ''(c) ENCOURAGEMENT OF COMPETITION AND COST SAVINGS.—The Secretary''; and~~

~~(B) by striking out ''contracts covered by this chapter'' and inserting in lieu thereof ''contracts of the Department of Defense''; and~~

~~(2) is transferred to section 1701 of title 10, United States Code, and inserted at the end of such section.~~

~~(b) CLERICAL AMENDMENTS.—Chapter 137 of title 10, United States Code, is amended—~~

~~(1) by striking out the section heading of section 2317; and~~

~~(2) in the table of sections at the beginning of such chapter, by striking out the item relating to section 2317.~~

~~SEC. 1032. REPEAL OF REQUIREMENT FOR ANNUAL REPORT BY ADVOCATES FOR COMPETITION.~~

~~Subsection (c) of section 2318 of title 10, United States Code, is repealed.~~

~~PART II—CIVILIAN AGENCY ACQUISITIONS~~

~~Subpart A—Competition Requirements~~

~~SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGULATION.~~

~~Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—~~

~~(1) in subsection (a)(1)(A), by striking out ''modifications'' and all that follows through ''of 1984'' and inserting in lieu thereof ''Federal Acquisition Regulation''; and~~

~~(2) in subsection (g)(1), by striking out ''regulations modified'' and all that follows through ''of 1984,'' and inserting in lieu thereof ''Federal Acquisition Regulation''.~~

~~SEC. 1052. EXCLUSION OF PARTICULAR SOURCES.~~

~~Section 303(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)) is amended—~~

~~(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;~~

~~(2) by inserting after paragraph (1) the following new paragraph (2):~~

~~''(2) The determination required of the agency head in paragraph (1) may not be made for a class of purchases or contracts.''; and~~

(3) in paragraph (4), as redesignated by paragraph (1), by striking out ''paragraphs (1) and (2)'' and inserting in lieu thereof ''paragraphs (1) and (3)''.

SEC. 1053. APPROVAL FOR USE OF NONCOMPETITIVE PROCEDURES.

Section 303(f)(1)(B)(i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(i)) is amended by inserting before the semicolon at the end the following: ''or by an official referred to in clause (ii), (iii), or (iv)''.

SEC. 1054. REFERENCE TO HEAD OF A CONTRACTING ACTIVITY.

Section 303(f)(1)(B)(ii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(ii)) is amended by striking out ''head of the procuring activity'' and inserting in lieu thereof ''head of the contracting activity''.

SEC. 1055. TASK AND DELIVERY ORDER CONTRACTS.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303G the following new section:

''TASK AND DELIVERY ORDER CONTRACTS

''SEC. 303H. (a) AUTHORITY TO AWARD.—Subject to the requirements of this section, an agency head may

~~enter into a contract that does not procure or specify a firm quantity of supplies or services (other than a minimum or maximum quantity) and that provides for the issuance of delivery orders or task orders during the specified period of the contract. The agency head may enter into such a contract only under the authority of this section.~~

~~"(b) CONTRACT PERIOD NOT TO EXCEED 3 YEARS.—The period of a contract referred to in subsection (a), including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 3 years, except that, when multiple contracts are awarded under subsection (c)(4) pursuant to the same solicitation, the period of each such contract may exceed 3 years but may not exceed 5 years.~~

~~"(c) AWARD PROCEDURES.—(1) An agency head may use procedures other than competitive procedures to enter into a contract referred to in subsection (a) only if an exception in subsection (c) of section 303 applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.~~

~~"(2) The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope,~~

~~magnitude, and duration of the proposed contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.~~

~~"(3) The solicitation shall include the following:~~

~~"(A) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.~~

~~"(B) The maximum quantity or dollar value of supplies or services to be procured under the contract.~~

~~"(C) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the supplies or services to be procured under the contract.~~

~~"(4)(A) An agency head may, on the basis of one solicitation, award separate contracts under this section for the same or similar supplies or services to two or more sources if the solicitation states that the agency head has the option to do so.~~

~~"(B) In any solicitation for an advisory and assistance services contract for a period in excess of 1 year,~~

~~or for an amount (including all options) in excess of $10,000,000, an agency head shall—~~

~~"(i) provide for a multiple award under subparagraph (A); and~~

~~"(ii) include a statement that the agency head may also elect to award only one contract if the agency head determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.~~

~~"(5) A contract referred to in subsection (a) shall contain the same information that is required by paragraph (3) to be included in the solicitation of offers for that contract.~~

~~"(d) ORDERS.—(1) The following actions are not required for a delivery order or task order issued under a contract entered into in accordance with this section:~~

~~"(A) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).~~

~~"(B) Except as provided in paragraph (2), a competition (or a waiver of competition approved in accordance with section 303(f)) that is separate from that used for entering into the contract.~~

~~"(2)(A) When multiple contracts are awarded under subsection (c)(4), each delivery order or task order issued under such contracts shall be competed among all of the contractors awarded such contracts unless the contracting officer determines in writing that—~~

~~"(i) the agency's need for the supplies or services ordered is of such unusual urgency that competition would result in unacceptable delays in fulfilling the agency's needs;~~

~~"(ii) the supplies or services ordered are so unique or highly specialized that only one such contractor is capable of providing the supplies or services required at the level of quality required; or~~

~~"(iii) the delivery order or task order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a delivery order or task order already issued on a competitive basis.~~

~~"(B) When a delivery order or task order is competed pursuant to subparagraph (A), the order shall include a statement of work that clearly specifies all tasks to be performed under the order.~~

~~"(3) A protest is not authorized in connection with the issuance, proposed issuance, or competing of a delivery order or task order except for a protest on the ground~~

that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT.—(1) A delivery order or task order may not increase the scope, period, or maximum value of the contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 303 and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(f) TASK ORDER OMBUDSMAN.—Each agency head who awards multiple contracts under subsection (c)(4) shall appoint or designate a task order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that task orders are issued on a competitive basis when required under subsection (d)(2). The task order ombudsman shall be a senior agency official who is independent of the contracting

officer for the contracts and may be the agency's competition advocate.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by inserting after the item relating to section 303G the following new item:

''Sec. 303H. Task and delivery order contracts.''.

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.

(a) CONTENT OF SOLICITATION.—Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(1) in subsection (b)(1)(A)—

(A) by inserting ''and significant subfactors'' after ''all significant factors''; and

(B) by striking out ''(including price)'' and inserting ''(including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors)'';

(2) in subsection (b)(1)(B), by inserting ''and subfactors'' after ''factors'';

(3) in subsection (b)(2)(B), by striking out clause (i) and inserting in lieu thereof the following:

''(i) either a statement that the proposals are intended to be evaluated with,

~~and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and''; and~~

~~(4) by adding at the end the following new subsection:~~

~~''(c)(1) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an agency head—~~

~~''(A) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror);~~

~~''(B) shall include cost or price to the Government as an evaluation factor that must be considered in the evaluation of proposals; and~~

~~''(C) shall disclose to offerors whether all evaluation factors other than price or cost, when combined, are—~~

~~''(i) significantly more important than price or cost;~~

~~''(ii) approximately equal in importance to price or cost; or~~

~~''(iii) significantly less important than price or cost.~~

~~''(2) Nothing in this subsection prohibits an agency from—~~

~~''(A) providing additional information in a solicitation, including numeric weights for all evaluation factors; or~~

~~''(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest price or cost.''.~~

~~(b) EVALUATION AND AWARD.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—~~

~~(1) in subsection (a), by inserting '', and award a contract,'' after ''competitive proposals'';~~

~~(2) in subsection (c), by inserting ''in accordance with subsection (a)'' in the second sentence after ''shall evaluate the bids''; and~~

~~(3) in subsection (d)—~~

~~(A) by striking out paragraph (1) and inserting in lieu thereof the following:~~

~~"(1) An agency head shall evaluate competitive proposals in accordance with subsection (a) and may award a contract—~~

~~"(A) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or~~

~~"(B) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), provided that, as required by section 303A(b)(2)(B)(i), the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary."; and~~

~~(B) by striking out paragraphs (2) and (3) and by redesignating paragraph (4) as paragraph (2).~~

~~(c) APPLICABILITY.—~~

~~(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to—~~

~~(A) solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act; and~~

~~(B) contracts awarded pursuant to those solicitations.~~

~~(2) AUTHORITY TO APPLY AMENDMENTS EARLY.—The head of an executive agency may apply the amendments made by this section to solicitations issued before the end of the period referred to in paragraph (1). The head of the executive agency shall publish in the Federal Register notice of any such earlier date of application at least 10 days before that date.~~

~~SEC. 1062. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.~~

~~Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a), as amended by section 1061(a)(4), is further amended by adding at the end the following new subsection:~~

~~''(d) An agency head, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices under the contract for options to purchase additional supplies or services under the contract~~

~~unless the agency head has determined that there is a reasonable likelihood that the options will be exercised.''.~~

~~SEC. 1063. PROMPT NOTICE OF AWARD.~~

~~(a) SEALED BID PROCEDURES.—Subsection (c) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following: ''Within 3 days after the date of contract award, the agency head shall notify offerors not awarded the contract that the contract has been awarded.''.~~

~~(b) COMPETITIVE PROPOSALS PROCEDURES.—Paragraph (2) of section 303B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(d)), as redesignated by section 1061(b)(3)(B), is amended in the second sentence by striking out ''shall promptly notify'' and inserting in lieu thereof '', within 3 days after the date of contract award, shall notify''.~~

~~SEC. 1064. POST-AWARD DEBRIEFINGS.~~

~~Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—~~

~~(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and~~

~~(2) by inserting after subsection (d) the following new subsection (e):~~

~~"(e)(1) When a contract is awarded by an executive agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the executive agency within 7 days after the date of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An employee of the executive agency shall debrief the offeror within 7 days after receipt of the request by the executive agency.~~

~~"(2) The debriefing shall provide the offeror with—~~

~~"(A) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;~~

~~"(B) the overall evaluated cost of the offer of the contractor awarded the contract and the overall evaluated cost of the offer of the debriefed offeror;~~

~~"(C) the overall ranking of all offers and the total technical and cost scores of all offers;~~

~~"(D) a summary of the rationale for the award;~~

~~"(E) in the case of a proposal that incorporates equipment that is a commercial item, the make and model of the item incorporated in the offer of the contractor awarded the contract; and~~

~~"(F) reasonable responses to questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable~~

~~regulations, and other applicable authorities were followed by the executive agency.~~

~~"(3) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552 of title 5, United States Code, including information relating to—~~

~~"(A) trade secrets;~~

~~"(B) privileged or confidential manufacturing processes and techniques; and~~

~~"(C) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.~~

~~"(4) Each solicitation for competitive proposals shall include a statement that information described in paragraph (2) may be disclosed in post-award debriefings.~~

~~"(5) If, within one year after the date of the contract award and as a result of a successful procurement protest or otherwise, the executive agency seeks to fulfill the requirement under the contract either on the basis of a new solicitation of offers or on the basis of the best and final offers considered in the awarding of that contract, the agency head shall provide each such offeror with—~~

~~"(A) all information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and~~

~~"(B) all comparable information with respect to the original offerors.~~

~~"(6) The contracting officer shall include a summary of the debriefing in the contract file.".~~

~~SEC. 1065. PROTEST FILE.~~

~~Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1064(1), is further amended by adding at the end the following:~~

~~"(h)(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, an agency head, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, United States Code, and an actual or prospective offeror so requests, a file of the protest shall be established by the contracting activity and reasonable access shall be provided to actual or prospective offerors.~~

~~"(2) Information exempt from disclosure under section 552 of title 5, United States Code, may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.~~

~~''(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).''.~~

~~SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLEMENT OF PROTESTS.~~

~~Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1066, is further amended by adding at the end the following new subsection:~~

~~''(i) If, in connection with a protest, an agency head determines that a solicitation, proposed award, or award does not satisfy the requirements of law or regulation, the agency head may take any action set out in subparagraphs (A) through (F) of section 3554(b)(1) of title 31, United States Code.''.~~

~~Subpart C—Kinds of Contracts~~

~~SEC. 1071. AGENCY HEAD DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.~~

~~Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)) is amended by striking out the second sentence.~~

~~PART III—ACQUISITIONS GENERALLY~~

~~SEC. 1091. REPEAL OF REQUIREMENT FOR ANNUAL REPORT ON COMPETITION.~~

~~Section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419) is repealed.~~

~~Subtitle B—Truth in Negotiations~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF APPLICABILITY.~~

~~Section 2306a(a)(1)(A) of title 10, United States Code, is amended—~~

~~(1) in clause (i), by striking out ''and before January 1, 1996,''; and~~

~~(2) in clause (ii), by striking out ''or after December 31, 1995,''.~~

~~SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA REQUIREMENTS.~~

~~Section 2306a(b) of title 10, United States Code, is amended to read as follows:~~

~~''(b) EXCEPTIONS.—(1) This section need not be applied to a contract or subcontract—~~

~~''(A) for which the price agreed upon is based on—~~

~~''(i) adequate price competition;~~

~~''(ii) established catalog or market prices of commercial items or of services regularly~~

~~used for other than Government purposes, as the case may be, that are sold in substantial quantities to the general public; or~~

~~''(iii) prices set by law or regulation; or~~

~~''(B) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing the reasons for such determination.~~

~~''(2) This section need not be applied to a modification of a contract or subcontract if—~~

~~''(A) the contract or subcontract being modified is one to which this section need not be applied by reason of clause (i) or (ii) of paragraph (1)(A); and~~

~~''(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of a noncommercial item.''.~~

~~SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUBMISSION NOT OTHERWISE REQUIRED.~~

~~Section 2306a(c) of title 10, United States Code, is amended by striking out ''by subsection (a), such data may nevertheless be required to be submitted by the head of the agency if'' and inserting in lieu thereof ''by reason~~

of subsection (b), submission of such data may not be required unless''.

SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL ITEMS.

Section 2306a of title 10, United States Code, is amended—

(1) by redesignating subsections (d), (e), (f), and (g) as subsections (e), (f), (g), and (i), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

''(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent practicable, the head of an agency shall—

''(A) conduct procurements of commercial items on a competitive basis; and

''(B) exercise the authority provided in subsection (b)(1)(A) to exempt the contracts and subcontracts under such procurements from the requirements of subsection (a).

''(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer may nonetheless

~~exempt a contract or subcontract under the procurement from the requirements of subsection (a) if—~~

~~"(A) in accordance with regulations implementing this paragraph, the offeror, contractor, or subcontractor, as the case may be, provides the contracting officer with information on the price charged by such offeror, contractor, or subcontractor for the same or similar products in the commercial marketplace; and~~

~~"(B) the contracting officer determines in writing that the information provided is adequate for evaluating the reasonableness of the price of the contract or subcontract.~~

~~"(3)(A) The Government shall be entitled to a reduction in price and the return of any overpayment, with interest, if an offeror, contractor, or subcontractor provides materially inaccurate or misleading information to the contracting officer pursuant to paragraph (2).~~

~~"(B) Nothing in subparagraph (A) is intended to preclude the head of an agency from negotiating any contract clause that provides additional price adjustment authority for the protection of the Government's interest in specific types of contracts, including multiple ordering agreements.~~

~~''(4)(A) The head of an agency shall have the right to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether such information is materially inaccurate or misleading.~~

~~''(B) The right under subparagraph (A) shall expire 3 years after the date of award of the contract, or 3 years after the date of the modification of the contract, with respect to which the information was provided.''.~~

~~SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.~~

~~Section 2306a of title 10, United States Code, is amended by striking out subsection (g), as redesignated by section 1204(1), and inserting in lieu thereof the following:~~

~~''(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the rights provided by section 2313 of this title.''.~~

~~SEC. 1206. REQUIRED REGULATIONS.~~

~~Section 2306a of title 10, United States Code, as amended by sections 1204 and 1205, is further amended by inserting after subsection (g) the following new subsection:~~

~~''(h) REQUIRED REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations identifying the type of procurements for which contracting officers should consider requiring the submission of certified cost or pricing data under this section.~~

~~''(2) The Secretary also shall prescribe regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed $500,000. Such information, at a minimum, shall include appropriate information on the prices at which such offeror has previously sold the same or similar products.''.~~

~~SEC. 1207. CONSISTENCY OF TIME REFERENCES.~~

~~Section 2306a of title 10, United States Code, as amended by section 1204, is further amended—~~

~~(1) in subparagraphs (A)(ii) and (B)(ii) of subsection (e)(4), by inserting ''or, if applicable consist-~~

ent with paragraph (1)(B), another date agreed upon between the parties'' after ''(or price of the modification)''; and

(2) in subsection (i), by inserting ''or, if applicable consistent with subsection (d)(1)(B), another date agreed upon between the parties'' after ''(or the price of a contract modification)''.

SEC. 1208. REPEAL OF SUPERSEDED PROVISION.

Subsection (c) of section 803 of Public Law 101–510 (10 U.S.C. 2306a note) is repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO ENSURE UNIFORM TREATMENT OF COST OR PRICING DATA.

(a) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) in section 304, by striking out subsection (d); and

(2) by inserting after section 304 the following new section:

''COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

''SEC. 304A. (a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) An agency head shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

~~"(A) An offeror for a prime contract under this title to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—~~

~~"(i) in the case of a prime contract entered into after the date of the enactment of the Federal Acquisition Streamlining Act of 1993, the price of the contract to the United States is expected to exceed $500,000; and~~

~~"(ii) in the case of a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1993, the price of the contract to the United States is expected to exceed $100,000.~~

~~"(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—~~

~~"(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;~~

~~"(ii) in the case of a change or modification made to a prime contract that was entered~~

~~into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1993, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and~~

~~''(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.~~

~~''(C) An offeror for a subcontract (at any tier) of a contract under this title shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—~~

~~''(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $500,000;~~

~~''(ii) in the case of a subcontract entered into under a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1993, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and~~

~~"(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.~~

~~"(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—~~

~~"(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and~~

~~"(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.~~

~~"(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the agency head concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.~~

~~"(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a cer-~~

~~tification required to be submitted under paragraph (2), shall be submitted—~~

~~"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or~~

~~"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.~~

~~"(4) Except as provided under subsection (b), this section applies to contracts entered into by an agency head on behalf of a foreign government.~~

~~"(5) For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(2) shall be considered as having been required to make available cost or pricing data under this section.~~

~~"(6)(A) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1993, the agency head that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.~~

~~"(B) An agency head is not required to modify a contract under subparagraph (A) if that agency head determines that the submission of cost or pricing data with respect to that contract should be required under subsection (c).~~

~~"(b) EXCEPTIONS.—(1) This section need not be applied to a contract or subcontract—~~

~~"(A) for which the price agreed upon is based on—~~

~~"(i) adequate price competition;~~

~~"(ii) established catalog or market prices of commercial items or of services regularly used for other than Government purposes, as the case may be, that are sold in substantial quantities to the general public; or~~

~~"(iii) prices set by law or regulation; or~~

~~"(B) in an exceptional case when the agency head determines that the requirements of this section may be waived and states in writing the reasons for such determination.~~

~~"(2) This section need not be applied to a modification of a contract or subcontract if—~~

~~"(A) the contract or subcontract being modified is one to which this section need not be applied by reason of clause (i) or (ii) of paragraph (1)(A); and~~

~~"(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of a noncommercial item.~~

~~"(c) AUTHORITY TO REQUIRE COST OR PRICING DATA.—When cost or pricing data are not required to be submitted by reason of subsection (b), submission of such data may not be required unless the agency head determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract. In any case in which the agency head requires such data to be submitted under this subsection, the agency head shall document in writing the reasons for such requirement.~~

~~"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent practicable, an agency head shall—~~

~~"(A) conduct procurements of commercial items on a competitive basis; and~~

~~"(B) exercise the authority provided in subsection (b)(1)(A) to exempt the contracts and subcontracts under such procurements from the requirements of subsection (a).~~

~~"(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer may nonetheless exempt a contract or subcontract under the procurement from the requirements of subsection (a) if—~~

~~"(A) in accordance with regulations implementing this paragraph, the offeror, contractor, or subcontractor, as the case may be, provides the contracting officer with information on the price charged by such offeror, contractor, or subcontractor for the same or similar products in the commercial marketplace; and~~

~~"(B) the contracting officer determines in writing that the information provided is adequate for evaluating the reasonableness of the price of the contract or subcontract.~~

~~"(3)(A) The Government shall be entitled to a reduction in price and the return of any overpayment, with interest, if an offeror, contractor, or subcontractor provides materially inaccurate or misleading information to the contracting officer pursuant to paragraph (2).~~

~~"(B) Nothing in subparagraph (A) is intended to preclude an agency head from negotiating any contract clause that provides additional price adjustment authority for the~~

~~protection of the Government's interest in specific types of contracts, including multiple ordering agreements.~~

~~"(4)(A) An agency head shall have the right to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether such information is materially inaccurate or misleading.~~

~~"(B) The right under subparagraph (A) shall expire 3 years after the date of award of the contract, or 3 years after the date of the modification of the contract, with respect to which the information was provided.~~

~~"(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the agency head that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.~~

~~"(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.~~

~~"(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.~~

~~"(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—~~

~~"(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—~~

~~"(i) was the sole source of the property or services procured; or~~

~~"(ii) otherwise was in a superior bargaining position with respect to the property or services procured;~~

~~"(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;~~

~~"(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or~~

~~"(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).~~

~~"(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—~~

~~"(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's~~

~~knowledge and belief, the contractor is entitled to the offset; and~~

~~"(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.~~

~~"(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—~~

~~"(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or~~

~~"(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable under paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.~~

~~"(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract with an executive agency subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—~~

~~"(A) for interest on the amount of such overpayment, to be computed—~~

~~"(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and~~

~~"(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and~~

~~"(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.~~

~~"(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.~~

~~"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the rights provided by section 304B(a)(2).~~

~~"(h) REQUIRED REGULATIONS.—(1) The head of each executive agency shall prescribe regulations identifying the type of procurements for which contracting officers of that executive agency should consider requiring the submission of certified cost or pricing data under this section.~~

~~"(2) The agency head also shall prescribe regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed $500,000. Such information, at a minimum, shall include appropriate information on the prices at which such offeror has previously sold the same or similar products.~~

~~"(i) COST OR PRICING DATA DEFINED.—In this section, the term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract~~

~~(or the price of a contract modification) or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such terms does not include information that is judgmental, but does include the factual information from which a judgment was derived.''.~~

~~(b) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 2304 the following:~~

~~''Sec. 304A. Cost or pricing data: truth in negotiations.''.~~

~~SEC. 1252. REPEAL OF OBSOLETE PROVISION.~~

~~(a) REPEAL.—Section 303E of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253e) is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the item relating to section 303E.~~

~~Subtitle C—Research and Development~~

~~SEC. 1301. DELEGATION OF CONTRACTING AUTHORITY.~~

~~Section 2356 of title 10, United States Code, is amended to read as follows:~~

“§ 2356. Contracts: delegations

“(a) AUTHORITY.—The Secretary of a military department may delegate any authority under section 1584, 2353, or 2354 of this title to—

“(1) the Under Secretary of his department;

“(2) an Assistant Secretary of his department;

“(3) a Deputy Assistant Secretary of his department; or

“(4) except as provided in subsection (b), the chief, and one assistant to the chief, of any technical service, bureau, or office.

“(b) LIMITATION.—The authority of the Secretary of a military department under section 2353(b)(3) of this title may not be delegated to a person described in subsection (a)(4).”.

SEC. 1302. RESEARCH PROJECTS.

(a) AUTHORITY TO CONDUCT BASIC, ADVANCED, AND APPLIED RESEARCH.—Section 2358 of title 10, United States Code, is amended to read as follows:

“§ 2358. Research projects

“(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic, advanced, and applied research and development projects that—

~~"(1) are necessary to the responsibilities of such Secretary's department in the field of basic, advanced, and applied research and development; and~~

~~"(2) either—~~

~~"(A) relate to weapons systems and other military needs; or~~

~~"(B) are of potential interest to such department.~~

~~"(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—~~

~~"(1) by contract, cooperative agreement, or other transaction with, or by grant to, educational or research institutions, private businesses, or other agencies of the United States;~~

~~"(2) by using employees and consultants of the Department of Defense; or~~

~~"(3) through one or more of the military departments.~~

~~"(c) REQUIREMENT OF POTENTIAL MILITARY INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of po-~~

~~tential interest to the Department of Defense or to such military department, respectively.''.~~

~~(b) AUTHORITY RELATED TO ADVANCED RESEARCH PROJECTS.—~~

~~(1) REPEAL OF REDUNDANT AUTHORITY.—Section 2371 of such title is amended—~~

~~(A) by striking out subsection (a);~~

~~(B) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (a), (b), (c), (d), (e), and (f), respectively;~~

~~(C) in subsection (a), as so redesignated—~~

~~(i) in paragraph (1), by striking out ''subsection (a)'' and inserting in lieu thereof ''section 2358 of this title''; and~~

~~(ii) in paragraph (2), by striking out ''subsection (e)'' and inserting in lieu thereof ''subsection (d)''; and~~

~~(D) in subsection (e), as redesignated by subparagraph (B)—~~

~~(i) in paragraph (4), by striking out ''subsection (b)'' and inserting in lieu thereof ''subsection (a)''; and~~

~~(ii) in paragraph (5), by striking out ''subsection (e)'' and inserting in lieu thereof ''subsection (d)''.~~

~~(2) CONSISTENCY OF TERMINOLOGY.—Such section, as amended by paragraph (1), is further amended—~~

~~(A) in subsection (c)(1), by inserting ''and development'' after ''research'' both places it appears;~~

~~(B) in subsections (d) and (e)(3), by striking out ''advanced research'' and inserting in lieu thereof ''research and development''; and~~

~~(C) in subsection (e)(1), by striking out ''advanced research is'' and inserting in lieu thereof ''research and development are''.~~

~~(c) REDUNDANT AND OBSOLETE AUTHORITY FOR THE ARMY.—~~

~~(1) REPEAL.—Section 4503 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 431 of such title is amended by striking out the item relating to section 4503.~~

~~(d) REDUNDANT AND OBSOLETE AUTHORITY FOR THE AIR FORCE.—~~

~~(1) REPEAL.—Section 9503 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 931 of such title is amended by striking out the item relating to section 9503.~~

~~SEC. 1303. ELIMINATION OF INFLEXIBLE TERMINOLOGY REGARDING COORDINATION AND COMMUNICATION OF DEFENSE RESEARCH ACTIVITIES.~~

~~Section 2364 of title 10, United States Code, is amended—~~

~~(1) in subsection (b)(5), by striking out ''milestone 0, milestone I, and milestone II decisions'' and inserting in lieu thereof ''acquisition program decisions''; and~~

~~(2) in subsection (c), by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:~~

~~''(2) The term 'acquisition program decisions' has the meaning given such term in regulations prescribed by the Secretary of Defense for the purposes of this section.''.~~

~~Subtitle D—Procurement Protests~~

~~PART I—PROTESTS TO THE COMPTROLLER GENERAL~~

~~SEC. 1401. REVIEW OF PROTESTS AND EFFECT ON CONTRACTS PENDING DECISION.~~

~~(a) PERIODS FOR CERTAIN ACTIONS.—Section 3553 of title 31, United States Code, is amended—~~

~~(1) in subsection (b)—~~

~~(A) in paragraph (1), by striking out ''one working day of'' and inserting in lieu thereof ''one day after''; and~~

~~(B) in paragraph (2)—~~

~~(i) in subparagraph (A), by striking out ''25 working days from'' and inserting in lieu thereof ''25 days after''; and~~

~~(ii) in subparagraph (C), by striking out ''10 working days from'' and inserting in lieu thereof ''25 days after''; and~~

~~(2) in subsection (c)(3), by striking out ''thereafter'' and inserting in lieu thereof ''after the making of such finding''.~~

~~(b) REFERENCE TO HEAD OF CONTRACTING ACTIVITY.—Subsections (c)(2) and (e) of such section are amended by striking out ''head of the procuring activity''~~

~~and inserting in lieu thereof "head of the contracting activity".~~

~~(c) SUSPENSION OF PERFORMANCE.—Subsection (d) of such section is amended to read as follows:~~

~~"(d)(1) A contractor awarded a Federal agency contract may, during the period described in paragraph (5), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract upon receipt from the contracting officer responsible for the award of the contract of an authorization to proceed with performance of the contract.~~

~~"(2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (5) if the contracting officer determines in writing that—~~

~~"(A) a protest is likely to be filed; and~~

~~"(B) the immediate performance of the contract is not in the best interests of the United States.~~

~~"(3) Unless the contracting officer makes the determinations described in paragraph (2), performance of the contract may be authorized in the written notice of award transmitted to the contractor pursuant to paragraph (3) or (4)(B) of section 2305(b) of title 10 or subsection (c) or (d)(2) of section 303B of the Federal Property and Ad-~~

ministrative Services Act of 1949 (41 U.S.C. 253b), as the case may be.

"(4)(A) If the Federal agency awarding the contract receives notice of a protest in accordance with this section during the period described in paragraph (5)—

"(i) the contracting officer may not authorize performance of the contract to begin while the protest is pending; or

"(ii) if contract performance was authorized in accordance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

"(B) Performance and related activities suspended pursuant to subparagraph (A)(ii) by reason of a protest may not be resumed while the protest is pending.

"(C) The head of the contracting activity may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

"(i) upon a written finding that—

"(I) performance of the contract is in the best interests of the United States; or

~~''(II) urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and~~

~~''(ii) after the Comptroller General is notified of that finding.~~

~~''(5) The period referred to in paragraphs (2) and (4)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—~~

~~''(A) the date that is 10 days after the date of the contract award; or~~

~~''(B) the date that is 7 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.''.~~

~~SEC. 1402. DECISIONS ON PROTESTS.~~

~~(a) PERIODS FOR CERTAIN ACTIONS.—Section 3554(a) of title 31, United States Code, is amended—~~

~~(1) in paragraph (1), by striking out ''90 working days from'' and inserting in lieu thereof ''125 days after'';~~

~~(2) in paragraph (2), by striking out ''45 calendar days from'' and inserting ''65 days after'';~~

~~(3) by redesignating paragraph (3) as paragraph (4); and~~

~~(4) by inserting after paragraph (2) the following new paragraph (3):~~

~~''(3) An amendment that adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limit established under paragraph (1) of this subsection for final decision of the initial protest. If an amended protest cannot be resolved within such time limit, the Comptroller General may resolve the amended protest through the express option under paragraph (2) of this subsection.''.~~

~~(b) GAO RECOMMENDATIONS ON PROTESTS.—~~

~~(1) IMPLEMENTATION OF RECOMMENDATIONS.—Section 3554 of title 31, United States Code, is amended—~~

~~(A) in subsection (b), by adding at the end the following new paragraph:~~

~~''(3) If the Federal agency fails to implement fully the recommendations of the Comptroller General under this subsection with respect to a solicitation for a contract or an award or proposed award of a contract within 60 days after receiving the recommendations, the head of the contracting activity responsible for that contract shall re-~~

~~port such failure to the Comptroller General not later than 5 working days after the end of such 60-day period.'';~~

~~(B) by striking out subsection (c) and inserting in lieu thereof the following:~~

~~''(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency conducting the procurement pay to an appropriate interested party the costs of—~~

~~''(A) filing and pursuing the protest, including reasonable attorney's fees and consultant and expert witness fees; and~~

~~''(B) bid and proposal preparation.~~

~~''(2) No party may be paid, pursuant to a recommendation made under the authority of paragraph (1)—~~

~~''(A) costs for consultant and expert witness fees that exceed the rates provided under section 504(b)(1)(A) of title 5 for expert witnesses; or~~

~~''(B) costs for attorney's fees that exceed the rates provided for attorneys under section 504(b)(1)(A) of title 5.~~

~~"(3) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency shall—~~

~~"(A) pay the costs promptly out of funds appropriated by section 1304 of this title for the payment of judgments and reimburse that appropriation account out of available funds or out of additional funds appropriated for such Federal agency to make such reimbursement; or~~

~~"(B) if the Federal agency does not make such payment, promptly report to the Comptroller General the reasons for the failure to follow the Comptroller General's recommendation.~~

~~"(4) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency and the interested party shall attempt to reach an agreement on the amount of the costs to be paid. If the Federal agency and the interested party are unable to agree on the amount to be paid, the Comptroller General may, upon the request of the interested party, recommend to the Federal agency the amount of the costs that the Federal agency should pay."; and~~

~~(C) by striking out subsection (e) and inserting in lieu thereof the following:~~

~~"(e)(1) The Comptroller General shall report promptly to the Committee on Governmental Affairs and the Committee on Appropriations of the Senate and to the Committee on Government Operations and the Committee on Appropriations of the House of Representatives any case in which a Federal agency fails to implement fully a recommendation of the Comptroller General under subsection (b) or (c). The report shall include—~~

~~"(A) a comprehensive review of the pertinent procurement, including the circumstances of the failure of the Federal agency to implement a recommendation of the Comptroller General; and~~

~~"(B) a recommendation regarding whether, in order to correct an inequity or to preserve the integrity of the procurement process, the Congress should consider—~~

~~"(i) private relief legislation;~~

~~"(ii) legislative rescission or cancellation of funds;~~

~~"(iii) further investigation by the Congress; or~~

~~"(iv) other action.~~

~~"(2) Not later than January 31 of each year, the Comptroller General shall transmit to the Congress a report containing a summary of each instance in which a~~

~~Federal agency did not fully implement a recommendation of the Comptroller General under subsection (b) or (c) during the preceding year. The report shall also describe each instance in which a final decision in a protest was not rendered within 125 days after the date the protest is submitted to the Comptroller General.''.~~

~~(2) REQUIREMENT FOR PAYMENT IN ACCORDANCE WITH PRIOR GAO DETERMINATIONS.—Amounts to which the Comptroller General declared an interested party to be entitled under section 3554 of title 31, United States Code, as in effect immediately before the enactment of this Act, shall, if not paid or otherwise satisfied by the Federal agency concerned before the date of the enactment of this Act, be paid promptly from the appropriation made by section 1304 of such title for the payment of judgments. The Federal agency shall reimburse that appropriation account out of available funds or out of additional funds appropriated for such Federal agency to make such reimbursement. If the Federal agency is unable to make the reimbursement out of available funds, the head of such agency shall immediately take such action as may be necessary to transmit to Congress a request for an appropriation of additional funds to make such reimbursement.~~

~~(c) REFERENCE TO HEAD OF CONTRACTING ACTIVITY.—Subsections (b)(2) and (d) of section 3554 of title 31, United States Code, are amended by striking out "head of the procuring activity" and inserting in lieu thereof "head of the contracting activity".~~

~~SEC. 1403. REGULATIONS.~~

~~(a) COMPUTATION OF PERIODS.—Section 3555 of title 31, United States Code, is amended—~~

~~(1) by redesignating subsection (b) as subsection (d); and~~

~~(2) by inserting after subsection (a) the following new subsection (b):~~

~~"(b) The procedures shall provide that, in the computation of any period described in this subchapter—~~

~~"(1) the day of the act, event, or default from which the designated period of time begins to run not be included; and~~

~~"(2) the last day after such act, event, or default be included, unless—~~

~~"(A) such last day is a Saturday, a Sunday, or a legal holiday; or~~

~~"(B) in the case of a filing of a paper at the General Accounting Office or a Federal agency, such last day is a day on which weather or other conditions make the General Account-~~

~~ing Office or Federal agency inaccessible, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.''.~~

~~(b) ELECTRONIC FILINGS AND DISSEMINATIONS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection:~~

~~''(c) The Comptroller General may prescribe procedures for the electronic filing and dissemination of documents and information required under this subchapter. In prescribing such procedures, the Comptroller General shall consider the ability of all parties to achieve electronic access to such documents and records.''.~~

~~(c) REPEAL OF OBSOLETE DEADLINE.—Subsection (a) of such section is amended by striking out ''Not later than January 15, 1985, the'' and inserting in lieu thereof ''The''.~~

~~PART II—PROTESTS IN THE FEDERAL COURTS~~

~~SEC. 1421. NONEXCLUSIVITY OF REMEDIES.~~

~~Section 3556 of title 31, United States Code, is amended by striking out ''a district court of the United States or the United States Claims Court'' in the first sentence and inserting in lieu thereof ''the United States Court of Federal Claims''.~~

~~SEC. 1422. JURISDICTION OF THE UNITED STATES COURT OF FEDERAL CLAIMS.~~

~~(a) CLAIMS AGAINST THE UNITED STATES AND BID PROTESTS.—Section 1491 of title 28, United States Code, is amended—~~

~~(1) by redesignating subsection (b) as subsection (d);~~

~~(2) in subsection (a)—~~

~~(A) by striking out "(a)(1)" and inserting in lieu thereof "(a) CLAIMS AGAINST THE UNITED STATES.—";~~

~~(B) in paragraph (2), by striking out "(2) TO" and inserting in lieu thereof "(b) REMEDY AND RELIEF.—TO"; and~~

~~(C) by striking out paragraph (3); and~~

~~(3) by inserting after subsection (b), as designated by paragraph (2)(B), the following new subsection (c):~~

~~"(c) BID PROTESTS.—(1) The United States Court of Federal Claims has exclusive jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract. The court has jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.~~

~~''(2) To afford relief in such an action, the court may award any relief that the court considers proper, including declaratory and injunctive relief.~~

~~''(3) In exercising jurisdiction under this subsection, the court shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.~~

~~''(4) The district courts of the United States do not have jurisdiction of any action referred to in paragraph (1).''.~~

~~(b) CLERICAL AMENDMENTS.—~~

~~(1) SECTION HEADING.—The heading of such section is amended by inserting ''**BID PROTESTS;**'' after ''**GENERALLY;**''.~~

~~(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1491 and inserting in lieu thereof the following:~~

~~''1491. Claims against United States generally; bid protests; actions involving Tennessee Valley Authority.''.~~

~~PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING~~

~~SEC. 1431. REVOCATION OF DELEGATIONS OF PROCUREMENT AUTHORITY.~~

~~Section 111(b)(3) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(b)(3)) is amended by inserting after the third sentence the following: ''The Administrator may revoke a delegation of authority with respect to a particular contract before or after award of the contract, except that the Administrator may revoke a delegation after the contract is awarded only when there is a finding of a violation of law or regulation in connection with the contract award.''.~~

~~SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS.~~

~~The first sentence of section 111(f)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(1)) is amended to read as follows: ''Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the 'board') shall review, as provided in this subsection, any decision by a Federal agency that is al-~~

~~leged to violate a statute, a regulation, or the conditions of a delegation of procurement authority.''.~~

~~SEC. 1433. PERIODS FOR CERTAIN ACTIONS.~~

~~(a) SUSPENSION OF PROCUREMENT AUTHORITY.—Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended in paragraph (3) by striking out subparagraph (A) and inserting in lieu thereof the following:~~

~~''(A)(i) If, with respect to an award of a contract, the board receives notice of a protest under this subsection within the period described in clause (ii), the board shall, at the request of an interested party, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the board can decide the protest.~~

~~''(ii) The period referred to in clause (i) is the period beginning on the date on which the contract is awarded and ending at the end of the later of—~~

~~''(I) the tenth day after the date of contract award; or~~

~~''(II) the seventh day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.~~

~~''(iii) The board shall hold the requested hearing within 7 days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of section 2305(b)(5) of title 10, United States Code, or section 303B(e) of this Act, within 7 days after the later of the date of the filing of the protest or the date of the debriefing.''.~~

~~(b) FINAL DECISION.—Paragraph (4)(B) of such section 111(f) is amended—~~

~~(1) by striking out ''45 working days'' and inserting in lieu thereof ''65 days''; and~~

~~(2) by adding at the end the following: ''An amendment which adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.''.~~

~~SEC. 1434. DISMISSALS OF PROTESTS.~~

~~Section 111(f)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(4)) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:~~

~~''(C) The board may dismiss a protest that the board determines—~~

~~''(i) is frivolous;~~

~~''(ii) has been brought in bad faith; or~~

~~''(iii) does not state on its face a valid basis for protest.''.~~

~~SEC. 1435. AWARD OF COSTS.~~

~~Section 111(f)(5) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:~~

~~''(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the cost of filing and pursuing the protest (including reasonable attorney's fees and consultant and expert witness fees), and bid and proposal preparation. However, no party may be declared entitled to costs for consultant and expert witness fees that exceed the rates provided under section 504(b)(1)(A) of title 5, United States Code, for expert witnesses or to costs for attorney's fees that exceed the rates provided for attorneys under section 504(b)(1)(A) of title 5, United States Code.''.~~

~~SEC. 1436. DISMISSAL AGREEMENTS.~~

~~Section 111(f)(5) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(5)) is amended by adding at the end the following new subparagraphs:~~

~~''(D) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure~~

of appropriated funds shall be submitted to the board and shall be made a part of the public record (subject to any protective order considered appropriate by the board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement submitted to the board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

''(E) Payment of amounts due from an agency under subparagraph (C) or under the terms of a settlement agreement under subparagraph (D) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The Federal agency concerned shall reimburse that appropriation account out of funds available for the procurement.''.

SEC. 1437. JURISDICTION OF DISTRICT COURTS.

Section 111(f)(6)(C) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(6)(C)) is amended by striking out ''a district court of the United States or the United States Claims Court''

~~in the third sentence and inserting in lieu thereof ''the United States Court of Federal Claims''.~~

~~SEC. 1438. MATTERS TO BE COVERED IN REGULATIONS.~~

~~Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended by striking out paragraph (8) and inserting in lieu thereof the following:~~

~~''(7)(A) The board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.~~

~~''(B) The procedures shall provide that, in the computation of any period described in this subsection—~~

~~''(i) the day of the act, event, or default from which the designated period of time begins to run not be included; and~~

~~''(ii) the last day after such act, event, or default be included, unless—~~

~~''(I) such last day is a Saturday, a Sunday, or a legal holiday; or~~

~~''(II) in the case of a filing of a paper at the board, such last day is a day on which weather or other conditions make the board or Federal agency inaccessible, in which event the~~

next day that is not a Saturday, Sunday, or legal holiday shall be included.

''(C) The procedures may provide for electronic filing and dissemination of documents and information required under this subsection and in so providing shall consider the ability of all parties to achieve electronic access to such documents and records.

''(D) The procedures shall provide that if the board expressly finds that a protest or a portion of a protest is frivolous or has not been brought or pursued in good faith, or that any person has willfully abused the board's process during the course of a protest, the board may impose appropriate sanctions. Such sanctions may include the dismissal of the protest and an award to any other party of costs (including reasonable attorneys' fees not to exceed the rates provided for pursuant to paragraph (5)(C)) incurred as a result of such protest or conduct.''.

SEC. 1439. DEFINITIONS.

(a) PROTEST.—Section 111(f)(9)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(9)(A)) is amended to read as follows:

''(A) the term 'protest' means a written objection by an interested party—

~~"(i) to a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services;~~

~~"(ii) to the cancellation of such a solicitation or other request;~~

~~"(iii) to an award or proposed award of such a contract; or~~

~~"(iv) to a termination or cancellation of an award of such a contract, if that termination or cancellation is alleged to be based in whole or in part on improprieties concerning the award of the contract;".~~

~~(b) PREVAILING PARTY.—Section 111(f)(9) of such Act is amended by adding at the end the following new subparagraph:~~

~~"(C) the term 'prevailing party', with respect to a determination of the board under paragraph (5)(B) that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority issued pursuant to this section, means a party that demonstrated such violation.".~~

~~SEC. 1440. OVERSIGHT OF ACQUISITION OF AUTOMATIC DATA PROCESSING EQUIPMENT BY FEDERAL AGENCIES.~~

~~Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is amended by adding at the end the following new subsection:~~

~~"(h)(1) The Administrator shall collect and compile data regarding the procurement of automatic data processing equipment under this section. The data collected and compiled shall include, at a minimum, with regard to each procurement the following:~~

~~"(A) The procuring agency.~~

~~"(B) The contractor.~~

~~"(C) The automatic data processing equipment and services procured.~~

~~"(D) The manufacturer of the equipment procured.~~

~~"(E) The amount of the contract, to the extent that the amount is not proprietary information.~~

~~"(F) The type of contract used.~~

~~"(G) The extent of competition for award.~~

~~"(H) Compatibility restrictions.~~

~~"(I) Significant modifications of the contract.~~

~~"(J) Contract price, to the extent that the price is not proprietary information.~~

~~''(2) The head of each Federal agency shall report to the Administrator in accordance with regulations issued by the Administrator all information that the Administrator determines necessary in order to satisfy the requirements in paragraph (1).~~

~~''(3) The Administrator shall—~~

~~''(A) carry out a systematic, periodic review of information received under this subsection;~~

~~''(B) use such information, as appropriate, to determine the compliance of Federal agencies with the requirements of this section; and~~

~~''(C) have the authority to suspend the delegation to a Federal agency of authority to lease or purchase automatic data processing equipment upon any failure by the head of the Federal agency to report to the Administrator in accordance with paragraph (2).''.~~

~~Subtitle E—Definitions and Other Matters~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~SEC. 1501. DEFINITIONS.~~

~~Section 2302 of title 10, United States Code, is amended—~~

~~(1) by striking out paragraphs (3), (4), (5), and (7);~~

~~(2) by redesignating paragraph (6) as paragraph (5); and~~

~~(3) by inserting after paragraph (2) the following:~~

~~''(3) The terms 'commercial item', 'full and open competition', 'major system', 'nondevelopmental item', 'procurement', 'procurement system', 'responsible source', 'standards', and 'technical data', have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).~~

~~''(4) The term 'simplified acquisition threshold' has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.''.~~

~~SEC. 1502. DELEGATION OF PROCUREMENT FUNCTIONS.~~

~~(a) CONSOLIDATION OF DELEGATION AUTHORITY.—Section 2311 of title 10, United States Code, is amended to read as follows:~~

~~"§ 2311. Delegation~~

~~"(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.~~

~~"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—~~

~~"(1) the head of an agency may, within his agency, delegate functions and assign responsibilities relating to procurement;~~

~~"(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and~~

~~"(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.~~

~~"(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each~~

~~military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.~~

~~''(2) The regulations shall include the following provisions:~~

~~''(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.~~

~~''(B) A provision that authorizes the Under Secretary of Defense for Acquisition to require a military department approved for termination or substantial reduction in participation in a joint acquisition program to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.''.~~

~~(b) CONFORMING REPEAL.—(1) Section 2308 of title 10, United States Code, is repealed.~~

~~(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2308.~~

SEC. 1503. DETERMINATIONS AND DECISIONS.

Section 2310 of title 10, United States Code, is amended to read as follows:

"§ 2310. Determinations and decisions

''(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

''(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

''(2) Each finding referred to in paragraph (1) shall be final. The head of the agency making such finding shall maintain a copy of the finding for not less 6 years after the date of the determination or decision.''.

SEC. 1504. UNDEFINITIZED CONTRACTUAL ACTIONS: RESTRICTIONS.

(a) CLARIFICATION OF LIMITATION.—Subsection (b) of section 2326 of title 10, United States Code, is amended—

~~(1) in the subsection caption, by striking out ''AND EXPENDITURE'';~~

~~(2) in paragraph (1)(B), by striking out ''or expended'';~~

~~(3) in paragraph (2), by striking out ''expend'' and inserting in lieu thereof ''obligate''; and~~

~~(4) in paragraph (3)—~~

~~(A) by striking out ''expended'' and inserting in lieu thereof ''obligated''; and~~

~~(B) by striking out ''expend'' and inserting in lieu thereof ''obligate''.~~

~~(b) WAIVER AUTHORITY.—Such subsection is amended—~~

~~(1) by redesignating paragraph (4) as paragraph (5); and~~

~~(2) by inserting after paragraph (3) the following new paragraph (4):~~

~~''(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.''.~~

~~(c) INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.—Section 2326(g)(1)(B) of title 10, United States Code, is amended by striking out ''small purchase thresh-~~

~~old'' and inserting in lieu thereof ''simplified acquisition threshold''.~~

~~SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUCTION SPECIAL TEST EQUIPMENT: CONTRACT TERMS AND CONDITIONS.~~

~~(a) REPEAL.—Section 2329 of title 10, United States Code, is repealed.~~

~~(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2329.~~

~~SEC. 1506. REGULATIONS FOR BIDS.~~

~~Section 2381(a) of title 10, United States Code, is amended by striking out ''(a) The Secretary'' and all that follows through the end of paragraph (1) and inserting in lieu thereof the following:~~

~~''(a) The Secretary of Defense or the Secretary of a military department may—~~

~~''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and''.~~

SEC. 1507. REPEAL OF EXECUTED REQUIREMENT RELATING TO CERTIFICATE OF INDEPENDENT PRICE DETERMINATION IN CERTAIN DEPARTMENT OF DEFENSE CONTRACT SOLICITATIONS.

Section 821 of Public Law 101–189 (103 Stat. 1503) is repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1551. DEFINITIONS.

Section 309(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(c)) is amended by striking out ''and 'supplies' '' and inserting in lieu thereof '' 'supplies', 'commercial item', 'nondevelopmental item', and 'simplified acquisition threshold' ''.

SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) by redesignating sections 309 and 310 as sections 312 and 313, respectively; and

(2) by inserting after section 308 the following new section 309:

''DELEGATION

''SEC. 309. (a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, an agency head may delegate, subject to his direction, to any other

officer or official of that agency, any power under this title.

"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this title by each executive agency for any other executive agency, and to facilitate joint procurement by those executive agencies—

"(1) an agency head may, within his executive agency, delegate functions and assign responsibilities relating to procurement;

"(2) the heads of two or more executive agencies may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

"(3) the heads of two or more executive agencies may create joint or combined offices to exercise procurement functions and responsibilities.".

SEC. 1553. DETERMINATIONS AND DECISIONS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1552, is further amended by inserting after section 309 the following new section 310:

~~''DETERMINATIONS AND DECISIONS~~

~~''SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED. Determinations and decisions required to be made under this title by an agency head may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.~~

~~''(b) WRITTEN FINDINGS REQUIRED. (1) Each determination under section 305(c) shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.~~

~~''(2) Each finding referred to in paragraph (1) shall be final. The agency head making such finding shall maintain a copy of the finding for not less 6 years after the date of the determination or decision.''.~~

~~SEC. 1554. UNDEFINITIZED CONTRACTUAL ACTIONS: RESTRICTIONS.~~

~~Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1553, is further amended by inserting after section 310 the following new section:~~

~~''UNDEFINITIZED CONTRACTUAL ACTIONS: RESTRICTIONS~~

~~''SEC. 311. (a) IN GENERAL. An agency head may not enter into an undefinitized contractual action unless~~

~~the request to the agency head for authorization of the contractual action includes a description of the anticipated effect on requirements of the executive agency concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.~~

~~''(b) LIMITATIONS ON OBLIGATIONS OF FUNDS.—(1) A contracting officer of an executive agency may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—~~

~~''(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal (as defined in subsection (f)) to definitize the contractual terms, specifications, and price; or~~

~~''(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.~~

~~''(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms,~~

~~specifications, and price are definitized for such contractual action.~~

~~"(3) If a contractor submits a qualifying proposal (as defined in subsection (f)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.~~

~~"(4) This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.~~

~~"(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the agency head approves such inclusion as being—~~

~~"(1) good business practice; and~~

~~"(2) in the best interests of the United States.~~

~~"(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the agency head approves such modification as being—~~

~~"(1) good business practice; and~~

~~"(2) in the best interests of the United States.~~

~~"(e) ALLOWABLE PROFIT.—An agency head shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—~~

~~"(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and~~

~~"(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.~~

~~"(f) DEFINITIONS.—In this section:~~

~~"(1) The term 'undefinitized contractual action' means a new procurement action entered into by an agency head for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does~~

~~not include contractual actions with respect to the following:~~

~~''(A) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.~~

~~''(B) Congressionally mandated long-lead procurement contracts.~~

~~''(2) The term 'qualifying proposal' means a proposal that contains sufficient information to enable the agency head concerned to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the agency head is entitled to review in connection with the contract, as determined by the contracting officer.''.~~

~~SEC. 1555. REPEAL OF AMENDMENTS TO UNCODIFIED TITLE.~~

~~The following provisions of law are repealed:~~

~~(1) Section 532 of Public Law 101–509 (104 Stat. 1470) and the matter set out in quotes in that section.~~

~~(2) Section 529 of Public Law 102–393 (106 Stat. 1761) and the matter inserted and added by that section.~~

~~TITLE II—CONTRACT ADMINISTRATION~~

~~Subtitle A—Contract Payment~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~SEC. 2001. CONTRACT FINANCING.~~

~~(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 2307 of title 10, United States Code, is amended—~~

~~(1) by striking out the section heading and inserting in lieu thereof the following:~~

~~"§ 2307. Contract financing";~~

~~(2) by striking out "(a) The head of an agency" and inserting in lieu thereof "(b) PAYMENT AUTHORITY.—The head of an agency";~~

~~(3) by striking out "(b) Payments" and inserting in lieu thereof "(c) PAYMENT AMOUNT.—Payments";~~

~~(4) by striking out "(c) Advance payments" and inserting in lieu thereof "(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments";~~

~~(5) by striking out "(d)(1) The Secretary of Defense" and inserting in lieu thereof "(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense"; and~~

~~(6) by striking out ''(e)(1) In any case'' and inserting in lieu thereof ''(g) ACTION IN CASE OF FRAUD.—(1) In any case''.~~

~~(b) FINANCING POLICY.—Such section, as amended by subsection (a), is further amended by inserting after the section heading the following new subsection (a):~~

~~''(a) POLICY.—Payments authorized under this section and made for financing purposes should be made periodically and in a timely manner to facilitate contract performance while protecting the security interests of the Government. Government financing shall be provided only to the extent necessary to ensure prompt and efficient performance and only after the availability of private financing is considered. A contractor's use of funds received as contract financing and the contractor's financial condition shall be monitored. If the contractor is a small business concern, special attention shall be given to meeting the contractor's financial need.''.~~

~~(c) TERMINOLOGY CORRECTION.—Such section, as amended by subsection (a)(2), is further amended in subsection (b)(2) by striking out ''bid''.~~

~~(d) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(4), is further amended in subsection (d) by inserting before the period at the end of the third sentence~~

~~the following: ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.~~

~~(e) CONDITIONS FOR PROGRESS PAYMENTS.—Such section, as amended by subsection (a)(5), is further amended in subsection (e)—~~

~~(1) in the first sentence of paragraph (1), by striking out ''work, which'' and all that follows through ''accomplished'' and inserting in lieu thereof ''work accomplished that meets standards established under the contract''; and~~

~~(2) by striking out paragraph (3) and inserting in lieu thereof the following:~~

~~''(3) This subsection applies to a contract for an amount equal to or greater than the simplified acquisition threshold.''.~~

~~(f) NAVY CONTRACTS.—Such section, as amended by subsection (a)(5), is further amended by inserting after subsection (e) the following new subsection (f):~~

~~''(f) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—~~

~~''(A) 95 percent, in the case of firms considered to be small businesses; and~~

~~''(B) 90 percent, in the case of all other firms.~~

~~''(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.~~

~~''(3) The Secretary of the Navy shall ensure that, when partial, progress, or other payments are made under a contract for construction or conversion of a naval vessel, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.''.~~

~~(g) CONFORMING AND CLERICAL AMENDMENTS.—~~

~~(1) CROSS REFERENCE.—Such section, as amended by subsection (a), is further amended in subsections (c) and (d) by striking out ''subsection (a)'' and inserting in lieu thereof ''subsection (b)''.~~

~~(2) TABLE OF CONTENTS.—The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by striking out the~~

~~item relating to section 2307 and inserting in lieu thereof the following:~~

~~''2307. Contract financing.''.~~

~~(h) REPEAL OF SUPERSEDED PROVISIONS.—~~

~~(1) PROGRESS PAYMENTS UNDER CERTAIN NAVY CONTRACTS.—~~

~~(A) REPEAL.—Section 7312 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7312.~~

~~(2) ADVANCEMENT OF PAYMENTS FOR NAVY SALVAGE OPERATIONS.—~~

~~(A) REPEAL.—Section 7364 of such title is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 637 of such title is amended by striking out the item relating to section 7364.~~

~~(3) PARTIAL PAYMENTS UNDER NAVY CONTRACTS—~~

~~(A) REPEAL.—Section 7521 of such title is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 645 of such~~

title is amended by striking out the item relating to section 7521.

(4) NAVY RESEARCH CONTRACTS.—Section 7522 of title 10, United States Code, is amended—

(A) by striking out subsection (b); and

(B) by redesignating subsection (c) as subsection (b).

SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.

(a) REPEAL.—Section 2355 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item relating to section 2355.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2051. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

''CONTRACT FINANCING'';

(2) by striking out ''(a) Any executive agency'' and inserting in lieu thereof ''(b) PAYMENT AUTHORITY.—Any executive agency'';

~~(3) by striking out ''(b) Payments'' and inserting in lieu thereof ''(c) PAYMENT AMOUNT.—Payments''; and~~

~~(4) by striking out ''(c) Advance payments'' and inserting in lieu thereof ''(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments''.~~

~~(b) FINANCING POLICY.—Such section, as amended by subsection (a), is further amended by inserting after the section heading the following new subsection (a):~~

~~''(a) POLICY.—Payments authorized under this section and made for financing purposes should be made periodically and in a timely manner to facilitate contract performance while protecting the security interests of the Government. Government financing shall be provided only to the extent necessary to ensure prompt and efficient performance and only after the availability of private financing is considered. A contractor's use of funds received as contract financing and the contractor's financial condition shall be monitored. If the contractor is a small business concern, special attention shall be given to meeting the contractor's financial need.''.~~

~~(c) TERMINOLOGY CORRECTION.—Such section, as amended by subsection (a)(2), is further amended in subsection (b)(2) by striking out ''bid''.~~

~~(d) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(4), is further amended in subsection (d) by inserting before the period at the end of the third sentence the following: ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.~~

~~(e) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAYMENTS.—~~

~~(1) IN GENERAL.—Such section, as amended by subsection (a), is further amended by adding at the end the following:~~

~~''(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The agency head shall ensure that any payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the agency head determines necessary to permit the agency head to carry out the preceding sentence.~~

~~''(2) The agency head shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under the con-~~

~~tract so long as the agency head has not made the contractual terms, specifications, and price definite.~~

~~"(3) This subsection applies to a contract for an amount equal to or greater than the simplified acquisition threshold.~~

~~"(f) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to such contractor.~~

~~"(2) An agency head receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.~~

~~"(3) The extent of any reduction or suspension of payments by an agency head under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.~~

~~"(4) A written justification for each decision of the agency head whether to reduce or suspend payments under paragraph (2), and for each recommendation received by the agency head in connection with such decision, shall be prepared and be retained in the files of the executive agency.~~

~~"(5) Each agency head shall prescribe procedures to ensure that, before the agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.~~

~~"(6) Not later than 180 days after the date on which an agency head reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of the executive agency shall—~~

~~"(A) review the determination of fraud on which the reduction or suspension is based; and~~

~~"(B) transmit a recommendation to the agency head whether the suspension or reduction should continue.~~

~~"(7) Each agency head who receives recommendations made by a remedy coordination official of the executive agency to reduce or suspend payments under para-~~

~~graph (2) during a fiscal year shall prepare for such year a report that contains the recommendations, the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. Any such report shall be available to any Member of Congress upon request.~~

~~''(8) An agency head may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.~~

~~''(9) In this subsection, the term 'remedy coordination official', with respect to an executive agency, means the person or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.''.~~

~~(2) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—The amendments made by paragraph (1) are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law, that relate to progress payment requests, as such procedures are in effect on the date of the enactment of this Act.~~

(f) CONFORMING AND CLERICAL AMENDMENTS.—

(1) REFERENCE.—Section 305 of the Federal Property and Administrative Services Act of 1949, as amended by subsection (a), is further amended in subsections (c) and (d) by striking out ''subsection (a)'' and inserting in lieu thereof ''subsection (b)''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by striking out the item relating to section 305 and inserting in lieu thereof the following:

''Sec. 305. Contract financing.''.

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2101. ALLOWABLE CONTRACT COSTS.

(a) COMPTROLLER GENERAL EVALUATION.—Subsection (l) of section 2324 of title 10, United States Code, is amended to read as follows:

''(l)(1) The Comptroller General shall periodically evaluate the implementation of this section by the Secretary of Defense. Such evaluation shall consider the extent to which—

''(A) the implementation is consistent with congressional intent;

''(B) the implementation achieves the objective of eliminating unallowable costs charged to covered contracts; and

~~''(C) the implementation (as well as the provisions of this section and the regulations prescribed under this section) could be improved or strengthened.~~

~~''(2) The Comptroller General shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives a report on such evaluation within 90 days after publication by the Secretary of Defense in the Federal Register of regulations that make substantive changes in regulations pertaining to allowable costs under covered contracts.''.~~

~~(b) COVERED CONTRACT DEFINED.—Subsection (m) of such section is amended to read as follows:~~

~~''(m) In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by the Department of Defense, except that such term does not include a fixed-price contract without cost incentives.''.~~

~~SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMERGENCY PERIODS.~~

~~(a) REPEAL.—Section 2382 of title 10, United States Code, is repealed.~~

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2382.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2151. ALLOWABLE CONTRACT COSTS.

(a) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256) is amended to read as follows:

"ALLOWABLE COSTS

"SEC. 306. (a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency's supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

"(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the agency head determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to

~~in subsection (a) that defines the allowability of specific selected costs, the agency head shall assess a penalty against the contractor in an amount equal to—~~

~~"(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus~~

~~"(B) interest (to be computed based on regulations issued by the agency head) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.~~

~~"(2) If the agency head determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the agency head shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.~~

~~"(c) WAIVER OF PENALTY.—The agency head shall prescribe regulations providing for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—~~

~~"(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;~~

~~"(2) the amount of unallowable costs subject to the penalty is insignificant; or~~

~~"(3) the contractor demonstrates, to the contracting officer's satisfaction, that—~~

~~"(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and~~

~~"(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.~~

~~"(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of an agency head under subsection (a) or (b)—~~

~~"(1) shall be considered a final decision for the purposes of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and~~

~~"(2) is appealable in the manner provided in section 7 of such Act.~~

~~"(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:~~

~~"(A) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).~~

~~"(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.~~

~~"(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or had pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).~~

~~"(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer~~

~~authorizing in advance such payments in accordance with applicable regulations of the agency head concerned.~~

~~"(E) Costs of membership in any social, dining, or country club or organization.~~

~~"(F) Costs of alcoholic beverages.~~

~~"(G) Contributions or donations, regardless of the recipient.~~

~~"(H) Costs of advertising designed to promote the contractor or its products.~~

~~"(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.~~

~~"(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.~~

~~"(K) Costs incurred in making any payment (commonly known as a 'golden parachute payment') which is—~~

~~"(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and~~

~~"(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.~~

~~"(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.~~

~~"(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under regulations prescribed by the agency head concerned.~~

~~"(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country.~~

~~"(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative pro-~~

~~ceeding commenced by the United States or a State, to the extent provided in subsection (k).~~

~~"(2)(A) Pursuant to regulations prescribed by the head of the executive agency concerned and subject to the availability of appropriations, the agency head, in awarding a covered contract, may waive the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the agency head determines that—~~

~~"(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;~~

~~"(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and~~

~~"(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is~~

~~necessary to comply with a collective bargaining agreement.~~

~~"(B) The head of the executive agency concerned shall include in the solicitation for a covered contract a statement indicating—~~

~~"(i) that a waiver has been granted under subparagraph (A) for the contract; or~~

~~"(ii) whether the agency head will consider granting such a waiver, and, if the agency head will consider granting a waiver, the criteria to be used in granting the waiver.~~

~~"(C) The agency head shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.~~

~~"(3) The head of each executive agency concerned shall prescribe regulations to implement this section with respect to contracts of that executive agency. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications.~~

~~"(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and~~

~~in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:~~

~~''(A) Air shows.~~

~~''(B) Membership in civic, community, and professional organizations.~~

~~''(C) Recruitment.~~

~~''(D) Employee morale and welfare.~~

~~''(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).~~

~~''(F) Community relations.~~

~~''(G) Dining facilities.~~

~~''(H) Professional and consulting services, including legal services.~~

~~''(I) Compensation.~~

~~''(J) Selling and marketing.~~

~~''(K) Travel.~~

~~''(L) Public relations.~~

~~''(M) Hotel and meal expenses.~~

~~''(N) Expense of corporate aircraft.~~

~~''(O) Company-furnished automobiles.~~

~~"(P) Advertising.~~

~~"(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until the contracting officer has obtained—~~

~~"(A) adequate documentation with respect to such costs; and~~

~~"(B) the opinion of the executive agency's contract auditor on the allowability of such costs.~~

~~"(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, an executive agency's contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.~~

~~"(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of an executive agency's contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.~~

~~"(g) APPLICABILITY OF REQUIRED REGULATIONS.—The regulations required to be prescribed under subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.~~

~~"(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed by the agency head concerned.~~

~~"(2) The agency head concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the agency head—~~

~~"(A) determines in such case that it would be in the interest of the United States to waive such certification; and~~

~~"(B) states in writing the reasons for that determination and makes such determination available to the public.~~

~~"(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an executive agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of~~

~~title 18, United States Code, and section 3729 of title 31, United States Code.~~

~~"(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the United States is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.~~

~~"(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).~~

~~"(2) A disposition referred to in paragraph (1)(B) is any of the following:~~

~~"(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).~~

~~"(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).~~

~~"(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).~~

~~"(D) A final decision—~~

~~"(i) to debar or suspend the contractor,~~

~~"(ii) to rescind or void the contract, or~~

~~"(iii) to terminate the contract for default, by reason of the violation or failure referred to in paragraph (1).~~

~~"(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).~~

~~"(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as~~

~~reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.~~

~~''(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the agency head that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head determines, under regulations prescribed by such agency head, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency.~~

~~''(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).~~

~~''(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.~~

~~"(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.~~

~~"(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).~~

~~"(6) In this subsection:~~

~~"(A) The term 'proceeding' includes an investigation.~~

~~"(B) The term 'costs', with respect to a proceeding—~~

~~"(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and~~

~~"(ii) includes—~~

~~"(I) administrative and clerical expenses;~~

~~"(II) the cost of legal services, including legal services performed by an employee of the contractor;~~

~~"(III) the cost of the services of accountants and consultants retained by the contractor; and~~

~~"(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.~~

~~"(C) The term 'penalty' does not include restitution, reimbursement, or compensatory damages.~~

~~"(l) PERIODIC EVALUATION OF IMPLEMENTATION.—(1) The Comptroller General shall periodically evaluate the implementation of this section by the heads of executive agencies. Such evaluation shall consider the extent to which—~~

~~"(A) the implementation is consistent with congressional intent;~~

~~"(B) the implementation achieves the objective of eliminating unallowable costs charged to covered contracts; and~~

~~"(C) the implementation (as well as the provisions of this section and the regulations prescribed~~

~~under this section) could be improved or strengthened.~~

~~''(2) The Comptroller General shall submit to the Committees on Governmental Affairs and on Appropriations of the Senate and the Committees on Government Operation and on Appropriations of the House of Representatives a report on such evaluation within 90 days after the head of any executive agency publishes in the Federal Register regulations that make substantive changes in regulations pertaining to allowable costs under covered contracts.~~

~~''(m) COVERED CONTRACT DEFINED.—In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by an executive agency, except that such term does not include a fixed-price contract without cost incentives.''.~~

~~(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the item relating to section 306 and inserting in lieu thereof the following:~~

~~''Sec. 306. Allowable costs.''.~~

~~PART III—ACQUISITIONS GENERALLY~~

~~SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS.~~

~~Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420) is repealed.~~

Subtitle C—Audit and Access to Records

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—

(1) IN GENERAL.—Section 2313 of title 10, United States Code, is amended to read as follows:

"§ 2313. Examination of records of contractor

"(a) AGENCY AUTHORITY.—The head of an agency, acting through an authorized representative—

"(1) is entitled to inspect the plant and audit the records of—

"(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

"(B) a subcontractor performing any subcontract under such a contract or combination of contracts; and

"(2) shall, for the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or sub-

~~contract, have the right to examine all records of the contractor or subcontractor related to—~~

~~"(A) the proposal for the contract or subcontract;~~

~~"(B) the discussions conducted on the proposal;~~

~~"(C) pricing of the contract or subcontract; or~~

~~"(D) performance of the contract or subcontract.~~

~~"(b) SUBPOENA POWER.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of records of a contractor, access to which is provided to the Secretary of Defense by subsection (a).~~

~~"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.~~

~~"(3) The authority provided by paragraph (1) may not be redelegated.~~

~~"(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such~~

~~report to the Committees on Armed Services of the Senate and House of Representatives.~~

~~"(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are entitled to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.~~

~~"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—~~

~~"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and~~

~~"(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States~~

~~sources, that the public interest would be best served by not applying paragraph (1).~~

~~''(d) LIMITATION.—The right of the head of an agency under subsection (a), and the right of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.~~

~~''(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:~~

~~''(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.~~

~~''(f) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.''.~~

~~(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 137 of title 10, United States Code, is amended to read as follows:~~

~~''2313. Examination of records of contractor.''.~~

~~(b) REPEAL OF SUPERSEDED PROVISION.—~~

(1) REPEAL.—Section 2406 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2406.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—

(1) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1251(a), is further amended by inserting after section 304A the following new section:

''EXAMINATION OF RECORDS OF CONTRACTOR

''SEC. 304B. (a) AGENCY AUTHORITY.—The head of an executive agency, acting through an authorized representative—

''(1) is entitled to inspect the plant and audit the records of—

''(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that executive agency under this title; and

~~"(B) a subcontractor performing any subcontract under such a contract or combination of contracts; and~~

~~"(2) shall, for the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted pursuant to section 304A with respect to a contract or subcontract, have the right to examine all records of the contractor or subcontractor related to—~~

~~"(A) the proposal for the contract or subcontract;~~

~~"(B) the discussions conducted on the proposal;~~

~~"(C) pricing of the contract or subcontract; or~~

~~"(D) performance of the contract or subcontract.~~

~~"(b) SUBPOENA POWER.—(1) The agency head may require by subpoena the production of records of a contractor, access to which is provided by subsection (a).~~

~~"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.~~

~~"(3) The authority provided by paragraph (1) may not be delegated.~~

~~"(4) In the year following a year in which the head of an executive agency exercises the authority provided in paragraph (1), the agency head shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a report on the exercise of such authority during such preceding year and the reasons why such authority was exercised in any instance.~~

~~"(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are entitled to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.~~

~~"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the agency head concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—~~

~~"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and~~

~~"(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).~~

~~"(d) LIMITATION.—The right of an agency head under subsection (a), and the right of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.~~

~~"(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:~~

~~"(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.~~

~~"(f) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and~~

regardless of whether such items are in written form, in the form of computer data, or in any other form.''.

(2) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1251(b), is further amended by inserting after the item relating to section 304A the following: ''Sec. 304B. Examination of records of contractor.''.

(b) REPEAL OF SUPERSEDED PROVISION.—Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended by striking out subsection (c).

Subtitle D—Cost Accounting Standards

SEC. 2301. REPEAL OF OBSOLETE DEADLINE REGARDING PROCEDURAL REGULATIONS FOR THE COST ACCOUNTING STANDARDS BOARD.

Section 26(f)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(3)) is amended in the first sentence by striking out ''Not later than 180 days after the date of the enactment of this section, the Administrator'' and inserting in lieu thereof ''The Administrator''.

~~Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND SHIP SPARE PARTS; QUALITY CONTROL.~~

~~(a) REPEAL.—Section 2383 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2383.~~

~~SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAPON SYSTEMS.~~

~~Section 2403(h) of title 10, United States Code, is amended—~~

~~(1) by redesignating paragraph (2) as paragraph (3); and~~

~~(2) by inserting after paragraph (1) the following new paragraph (2):~~

~~"(2) The regulations shall include the following:~~

~~"(A) Guidelines for negotiating contractor guarantees that are reasonable and cost effective, as determined on the basis of the likelihood of defects and the estimated cost of correcting such defects.~~

~~"(B) Procedures for administering contractor guarantees.~~

~~"(C) Guidelines for determining the cases in which it may be appropriate to waive the requirements of this section.".~~

~~SEC. 2403. REPEAL OF REQUIREMENT FOR COMPLETE DELIVERY OF SUBSISTENCE SUPPLIES AT SPECIFIC PLACE UPON INSPECTION.~~

~~(a) ARMY CONTRACTS.—~~

~~(1) REPEAL.—Section 4534 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4534.~~

~~(b) AIR FORCE CONTRACTS.—~~

~~(1) REPEAL.—Section 9534 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9534.~~

~~PART II—ACQUISITIONS GENERALLY~~

~~SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EXPANSION OF AUTHORITY TO PROHIBIT SETOFFS AGAINST ASSIGNEES; REORGANIZATION OF SECTION; REVISION OF OBSOLETE PROVISIONS.~~

~~Section 3737 of the Revised Statutes (41 U.S.C. 15) is amended to read as follows:~~

~~''SEC. 3737. (a) No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.~~

~~''(b) The provisions of subsection (a) shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, provided:~~

~~''(1) That, in the case of any contract entered into after October 9, 1940, no claim shall be as-~~

~~signed if it arises under a contract which forbids such assignment;~~

~~"(2) That, unless otherwise expressly permitted by such contract, any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing;~~

~~"(3) That, in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of the assignment with—~~

~~"(A) the contracting officer or the head of his department or agency;~~

~~"(B) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and~~

~~"(C) the disbursing officer, if any, designated in such contract to make payment.~~

~~"(c) Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section shall constitute a valid assignment for all purposes.~~

~~"(d) In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.~~

~~"(e) Any contract of the Department of Defense, the General Services Administration, the Department of Energy, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff.~~

~~"(f) If a provision described in subsection (e) or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff for any liability~~

of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of—

"(1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract;

"(2) fines;

"(3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract); or

"(4) taxes, social security contributions, or the withholding or non withholding of taxes or social security contributions, whether arising from or independently of such contract.

"(g) Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights of obligations heretofore accrued.".

SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF CONTRACTS WITH GAO.

Section 3743 of the Revised Statutes (41 U.S.C. 20) is repealed.

~~Subtitle F—Claims and Disputes~~

~~PART I—ARMED SERVICES ACQUISITIONS~~

~~SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.~~

~~(a) DOD CERTIFICATION REQUIREMENT IN CONFLICT WITH GOVERNMENT-WIDE REQUIREMENT.—~~

~~(1) REPEAL.—Section 2410 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2410.~~

~~(b) REPEAL OF SUPERSEDED PROVISION.—Section 813(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2453), is repealed.~~

~~(c) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—Section 2310e of title 10, United States Code, is amended by adding at the end the following new subsection:~~

~~"(d) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1993, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such con-~~

~~tract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—~~

~~''(1) specifically refers to this subsection; and~~

~~''(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.''.~~

~~PART II—ACQUISITIONS GENERALLY~~

~~SEC. 2551. CONCURRENT JURISDICTION OF UNITED STATES DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.~~

~~Subsection (a) of section 1346 of title 28, United States Code, is amended to read as follows:~~

~~''(a)(1) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.~~

~~''(2)(A) Except as provided in subparagraph (B), the district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any other civil action or claim against the United States, not~~

~~exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.~~

~~''(B) The district courts shall not have jurisdiction over any civil action or claim against the United States which relates in any manner to a contract to which the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) applies, including a claim that seeks to establish the existence or nonexistence of such a contract, seeks to establish that such a contract is void, or seeks to determine and construe the terms of such a contract. The district courts do not have jurisdiction over any civil action or claim described in the preceding sentence pursuant to section 1331 or 1334 of this title or any other provision of law.''.~~

~~SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.~~

~~(a) PERIOD FOR FILING CLAIMS.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended in subsection (a) by inserting after the second sentence the following: ''Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the occurrence of the event or events giving rise to the claim.''.~~

~~(b) INCREASED THRESHOLD FOR CERTIFICATION, DECISION, AND NOTIFICATION REQUIREMENTS.—Subsection (c) of such section is amended by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.~~

~~(c) INCREASED MAXIMUM FOR APPLICABILITY OF SMALL CLAIMS PROCEDURE.—Section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended by striking out ''$10,000'' in the first sentence and inserting in lieu thereof ''$25,000''.~~

~~(d) REDUCED PERIOD FOR FILING ACTION IN COURT OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41 U.S.C. 609(a)(3)) is amended by striking out ''twelve months'' and inserting in lieu thereof ''90 days''.~~

~~(e) CLAIM DEFINED.—Section 2 of such Act (41 U.S.C. 601) is amended—~~

~~(1) by striking out ''and'' at the end of paragraph (6);~~

~~(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof ''; and''; and~~

~~(3) by adding at the end the following new paragraph:~~

~~''(8) the term 'claim' includes a request for equitable adjustment to contact terms and a request~~

for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.).''.

TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTIMATES AND MANPOWER ESTIMATES BEFORE DEVELOPMENT OR PRODUCTION.

(a) CONTENT AND SUBMISSION OF ESTIMATES.—Section 2434 of title 10, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following:

''(b) REGULATIONS.—The Secretary of Defense shall promulgate regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

''(1) that the independent estimate of the cost of a program—

''(A) be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and

~~''(B) include all costs of development, procurement, and operations and support, without regard to funding source or management control; and~~

~~''(2) that the manpower estimate include the total personnel required to operate, maintain, and support the program upon full operational deployment.''.~~

~~(b) TERMINOLOGY CORRECTION.—Subsection (a) of such section is amended by striking out ''full-scale engineering development'' and inserting in lieu thereof ''engineering and manufacturing development''.~~

~~SEC. 3002. ENHANCED PROGRAM STABILITY.~~

~~(a) BASELINE DESCRIPTIONS AND DEVIATION REPORTING.—Section 2435 of title 10, United States Code, is amended—~~

~~(1) in subsection (a)—~~

~~(A) by striking out paragraph (2); and~~

~~(B) in paragraph (1)—~~

~~(i) by striking out ''(1)''; and~~

~~(ii) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and~~

~~(2) by striking out subsection (b) and inserting in lieu thereof the following:~~

~~''(b) REGULATIONS.—The Secretary of Defense shall promulgate regulations governing—~~

~~''(1) the content of baseline descriptions;~~

~~''(2) the submission of reports on deviations of a program from the baseline description by the program manager to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition;~~

~~''(3) procedures for review of deviation reports within the Department of Defense; and~~

~~''(4) procedures for submission and approval of revised baseline descriptions.''.~~

~~(b) TERMINOLOGY CORRECTION.—Subsection (a)(1) of such section, as redesignated by subsection (a)(1)(B)(ii), is amended by striking out ''full-scale engineering development'' and inserting in lieu thereof ''engineering and manufacturing development''.~~

~~SEC. 3003. REPEAL OF REQUIREMENT FOR DEFENSE ENTERPRISE PROGRAMS.~~

~~(a) AUTHORITY.—~~

~~(1) REPEAL.—Sections 2436 and 2437 of title 10, United States Code, are repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title~~

~~is amended by striking out the items relating to sections 2436 and 2437.~~

~~(b) CONFORMING AMENDMENT.—Section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2430 note) is amended—~~

~~(1) by striking out subsection (d); and~~

~~(2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.~~

~~SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE PROTOTYPING IN MAJOR PROGRAMS.~~

~~(a) REPEAL.—Section 2438 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2438.~~

~~SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE ALTERNATIVE SOURCES IN MAJOR PROGRAMS.~~

~~(a) REPEAL.—Section 2439 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2439.~~

~~Subtitle B—Testing Statutes~~

~~SEC. 3011. REPEAL OF TESTING REQUIREMENT FOR WHEELED OR TRACKED VEHICLES.~~

~~(a) REPEAL.—Section 2362 of title 10, United States Code, is repealed.~~

~~(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item relating to section 2362.~~

~~SEC. 3012. MAJOR SYSTEMS AND MUNITIONS PROGRAMS: SURVIVABILITY AND LETHALITY TESTING.~~

~~(a) SUBSTITUTION OF VULNERABILITY TESTING FOR SURVIVABILITY TESTING.—Section 2366 of title 10, United States Code, is amended—~~

~~(1) by striking out ''survivability'' each place it appears in subsections (a)(1)(A), (a)(2)(A), (c)(1), (d), (e)(3), and (e)(6)(A) and inserting in lieu thereof ''vulnerability''; and~~

~~(2) in subsection (b)(1), by striking out ''Survivability'' and inserting in lieu thereof ''Vulnerability''.~~

~~(b) LESS THAN FULL-UP TESTING AUTHORIZED.—Section 2366(e)(3) of such title is amended by inserting after ''configured for combat,'' the following: ''or, if the covered system is a high value system, by firing such munitions at components, subsystems, and subassemblies (or~~

~~realistic replicas or surrogates) together with performing design analyses, modeling and simulation, and analysis of combat data,''.~~

~~(c) WAIVER AUTHORITY AFTER FULL-SCALE DEVELOPMENT BEGINS.—Section 2366(c)(1) of such title is amended in the first sentence by striking out '', before the system enters full-scale development,''.~~

~~(d) REFERENCE TO CONGRESSIONAL COMMITTEES.—Section 2366(d) of such title is amended in the first sentence by striking out ''defense committees of Congress (as defined in section 2362(e)(3) of this title)'' and inserting in lieu thereof ''Committees on Armed Services and on Appropriations of the Senate and House of Representatives''.~~

~~SEC. 3013. OPERATIONAL TEST AND EVALUATION OF DEFENSE ACQUISITION PROGRAMS.~~

~~Section 2399(b) of title 10, United States Code, is amended—~~

~~(1) by redesignating paragraph (5) as paragraph (6); and~~

~~(2) by inserting after paragraph (4) the following new paragraph (5):~~

~~''(5)(A) The Secretary of Defense may, for a particular major defense acquisition program, prescribe and apply different operational test and evaluation procedures than~~

those provided under subsection (a) and paragraphs (1) through (3) of this subsection if the Secretary first transmits to Congress—

"(i) a certification that such testing would be unreasonably expensive and impracticable, cause unwarranted delay, or be unnecessary because of the acquisition strategy for that system; and

"(ii) a description of the actions taken to ensure that the system will be operationally effective and suitable when the system is introduced into the field.

"(B) Alternative operational test and evaluation procedures prescribed pursuant to subparagraph (A) may not be used to proceed with a major defense acquisition program beyond low-rate initial production.".

SEC. 3014. LOW-RATE INITIAL PRODUCTION OF NEW SYSTEMS.

(a) EXCEPTION FOR STRATEGIC DEFENSE MISSILE SYSTEMS.—Subsection (c) of section 2400 of title 10, United States Code, is amended to read as follows—

(1) in paragraph (1), by striking out "and military satellite programs" and inserting in lieu thereof ", military satellite programs, and strategic defense missile programs";

(2) in paragraph (2), by striking out ''and military satellite program'' and inserting in lieu thereof '', military satellite program, and strategic defense missile program''; and

(3) by striking out the caption of such subsection and inserting in lieu thereof ''LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL, SATELLITE, AND STRATEGIC DEFENSE MISSILE PROGRAMS. ''.

(b) SUBMISSION OF TEST AND EVALUATION MASTER PLAN. Paragraph (2) of such section is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

''(B) any test and evaluation master plan prepared for that program;''.

Subtitle C—Service Specific Laws

SEC. 3021. INDUSTRIAL MOBILIZATION.

(a) CONSOLIDATION AND REVISION OF AUTHORITY.—

(1) AUTHORITY. Subtitle V of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

~~"§ 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations~~

~~"(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the Secretary of Defense or the Secretary of a military department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.~~

~~"(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.~~

~~"(c) SEIZURE OF FACILITIES UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the Secretary of Defense or the Secretary of a military department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the Secretary of Defense or the Secretary of the military department concerned, is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or~~

~~operating the plant, or the responsible head thereof, refuses—~~

~~"(1) to give precedence to the order as prescribed in subsection (b);~~

~~"(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the Secretary; or~~

~~"(3) to furnish them at a reasonable price as determined by the Secretary.~~

~~"(d) USE OF SEIZED FACILITY.—The President, through the Secretary of Defense or the Secretary of a military department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).~~

~~"(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.~~

~~"(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined not more than $50,000.".~~

~~(2) TECHNICAL AMENDMENT.—The table of sections at the beginning of subchapter V of such~~

~~chapter is amended by adding at the end the following new item:~~

~~"2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.".~~

~~(b) REPEAL OF SUPERSEDED AUTHORITY.—~~

~~(1) ARMY AUTHORITY.—~~

~~(A) REPEAL.—Section 4501 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 431 of such title is amended by striking out the item relating to section 4501.~~

~~(2) AIR FORCE AUTHORITY.—~~

~~(A) REPEAL.—Section 9501 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 931 of such title is amended by striking out the item relating to section 9501.~~

~~SEC. 3022. INDUSTRIAL MOBILIZATION: PLANTS; LISTS; BOARD ON MOBILIZATION OF INDUSTRIES ESSENTIAL FOR MILITARY PREPAREDNESS.~~

~~(a) CONSOLIDATION AND REVISION OF AUTHORITY.—~~

~~(1) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, as amended by sec-~~

~~tion 3021(a)(1), is further amended by adding at the end the following:~~

~~"§ 2539. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness~~

~~"(a) LISTS OF ARMS AND AMMUNITION PLANTS.—The Secretary of Defense and the secretaries of the military departments may each maintain a list of privately owned plants in the United States, and the Territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may, when the Secretary of Defense or the Secretary concerned determines it necessary, obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.~~

~~"(b) LISTS OF PLANTS CONVERTIBLE TO ARMS AND AMMUNITION FACTORIES.—The Secretary of Defense and the secretaries of the military departments may each maintain a list of privately owned plants in the United States, and the Territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity~~

~~sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may, when the Secretary of Defense or the Secretary concerned determines it necessary, obtain complete information as to the equipment of each of those plants.~~

~~''(c) CONVERSION PLANS.—The Secretary of Defense or the Secretary concerned may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.~~

~~''(d) BOARD ON MOBILIZATION OF INDUSTRIES ESSENTIAL FOR MILITARY PREPAREDNESS.—The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness and may provide necessary clerical assistance to organize and coordinate operations under this section and section 2538 of this title.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of such chapter, as amended by section 3021(a)(2), is further amended by adding at the end the following new item:~~

~~''2539. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.''.~~

~~(b) REPEAL OF SUPERSEDED AUTHORITY.—~~

~~(1) ARMY AUTHORITY.—~~

~~(A) REPEAL.—Section 4502 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 431 of such title is amended by striking out the item relating to section 4502.~~

~~(2) AIR FORCE AUTHORITY.—~~

~~(A) REPEAL.—Section 9502 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 931 of such title is amended by striking out the item relating to section 9502.~~

~~**SEC. 3023. PROCUREMENT FOR EXPERIMENTAL PURPOSES.**~~

~~(a) CONSOLIDATION AND REVISION OF AUTHORITY.—~~

~~(1) AUTHORITY.—Chapter 139 of title 10, United States Code, is amended by adding at the end the following new section:~~

~~**"§ 2373. Procurement for experimental purposes**~~

~~''The Secretary of Defense and the secretaries of the military departments may each buy ordnance, signal, and chemical warfare supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental~~

~~or test purposes in the development of the best supplies that are needed for the national defense. Purchases under this section may be made inside or outside the United States by contract or otherwise. Chapter 137 of this title applies when such purchases are made in quantity.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:~~

~~''2373. Procurement for experimental purposes.''.~~

~~(b) REPEAL OF SUPERSEDED AUTHORITY.—~~

~~(1) ARMY AUTHORITY.—~~

~~(A) REPEAL.—Section 4504 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 431 of such title is amended by striking out the item relating to section 4504.~~

~~(2) AIR FORCE AUTHORITY.—~~

~~(A) REPEAL.—Section 9504 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 931 of such title is amended by striking out the item relating to section 9504.~~

~~SEC. 3024. REPEAL OF AUTHORITY FOR PROCUREMENT OF PRODUCTION EQUIPMENT.~~

~~(a) ARMY AUTHORITY.—~~

~~(1) REPEAL.—Section 4505 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 431 of such title is amended by striking out the item relating to section 4505.~~

~~(b) AIR FORCE AUTHORITY.—~~

~~(1) REPEAL.—Section 9505 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 931 of such title is amended by striking out the item relating to section 9505.~~

~~SEC. 3025. AVAILABILITY OF DEPARTMENT OF DEFENSE SAMPLES, DRAWINGS, INFORMATION, EQUIPMENT, MATERIALS, AND CERTAIN SERVICES.~~

~~(a) CONSOLIDATION AND REVISION OF AUTHORITY.—~~

~~(1) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, as amended by section 3022(a)(1), is further amended by adding at the end the following:~~

~~"§ 2540. Availability of samples, drawings, information, equipment, materials, and certain services~~

~~"(a) AUTHORITY.—The Secretary of Defense and the secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—~~

~~"(1) sell, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;~~

~~"(2) sell or lend government equipment or materials to any person or entity—~~

~~"(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or~~

~~"(B) for use in demonstrations to a friendly foreign government; and~~

~~"(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items.~~

~~''(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available pursuant to subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.~~

~~''(c) FEES.—Fees for services made available for testing under subsection (a)(3) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not be less than the direct costs involved, including the direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.~~

~~''(d) USE OF COLLECTED FEES.—Fees received for services made available pursuant to subsection (a)(3) may be credited to the appropriations or other funds of the activity providing such services.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of such chapter, as amended by section 3022(a)(2), is further amended by adding at the end the following new item:~~

~~''2540. Availability of samples, drawings, information, equipment, materials, and certain services.''.~~

~~(b) CONFORMING AMENDMENTS.—~~

~~(1) EXEMPTION FROM ADVERTISING REQUIREMENT.—Section 2314 of title 10, United States~~

~~Code, is amended by inserting ''or sale'' after ''procurement''.~~

~~(2) REPEAL OF SUPERSEDED ARMY AUTHORITY.—Chapter 431 of title 10, United States Code, is amended—~~

~~(A) by striking out sections 4506, 4507, and 4508; and~~

~~(B) in the table of sections at the beginning of such chapter, by striking out the items relating to such sections.~~

~~(3) REPEAL OF SUPERSEDED AIR FORCE AUTHORITY.—Subchapter I of chapter 931 of title 10, United States Code, is amended—~~

~~(A) by striking out sections 9506 and 9507; and~~

~~(B) in the table of sections at the beginning of such subchapter, by striking out the items relating to such sections.~~

~~SEC. 3026. REPEAL OF DUPLICATIVE GENERAL PROCUREMENT AUTHORITY.~~

~~(a) ARMY AUTHORITY.—~~

~~(1) REPEAL.—Section 4531 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title~~

~~is amended by striking out the item relating to section 4531.~~

~~(b) AIR FORCE AUTHORITY.—~~

~~(1) REPEAL.—Section 9531 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9531.~~

~~SEC. 3027. REPEAL OF AUTHORITY TO DELEGATE THE PROCUREMENT OF ARMY RATIONS.~~

~~(a) REPEAL.—Section 4533 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4533.~~

~~SEC. 3028. REPEAL OF AUTHORITY TO PURCHASE EXCEPTIONAL SUBSISTENCE SUPPLIES WITHOUT ADVERTISING.~~

~~(a) ARMY AUTHORITY.—~~

~~(1) REPEAL.—Section 4535 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title~~

~~is amended by striking out the item relating to section 4535.~~

~~(b) AIR FORCE AUTHORITY.—~~

~~(1) REPEAL.—Section 9535 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9535.~~

~~SEC. 3029. REPEAL OF AUTHORITY TO OBTAIN ASSISTANCE OF UNITED STATES MAPPING AGENCIES.~~

~~(a) ARMY AUTHORITY.—~~

~~(1) REPEAL.—Section 4537 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4537.~~

~~(b) AIR FORCE AUTHORITY.—~~

~~(1) REPEAL.—Section 9537 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9537.~~

~~**SEC. 3030. REPEAL OF AUTHORITY TO RECLAIM UNSERVICEABLE AMMUNITION.**~~

~~(a) ARMY AUTHORITY.—~~

~~(1) REPEAL.—Section 4538 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4538.~~

~~(b) AIR FORCE AUTHORITY.—~~

~~(1) REPEAL.—Section 9538 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9538.~~

~~**SEC. 3031. GRATUITOUS SERVICES OF OFFICERS OF CERTAIN RESERVE COMPONENTS.**~~

~~(a) CONSOLIDATION AND REVISION OF AUTHORITY.—~~

~~(1) AUTHORITY.—Chapter 11 of title 10, United States Code, is amended by inserting after section 278 the following new section:~~

~~"§ 279. Gratuitous services of officers of certain reserve components~~

~~''The Secretary of Defense and the secretaries of the military departments may each accept the gratuitous services of officers of the Army Reserve, Naval Reserve, Air Force Reserve, and Marine Corps Reserve in the enrolling, organizing, and training of members of such reserve components or the Reserve Officers' Training Corps, or in consulting on matters relating to the armed forces.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of such title is amended by inserting after the item relating to section 278 the following new item:~~

~~''Sec. 279. Gratuitous services of officers of certain reserve components.''.~~

~~(b) REPEAL OF SUPERSEDED PROVISIONS.—~~

~~(1) ARMY AUTHORITY.—~~

~~(A) REPEAL.—Section 4541 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4541.~~

~~(2) AIR FORCE AUTHORITY.—~~

~~(A) REPEAL.—Section 9541 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9541.~~

~~SEC. 3032. CIVIL RESERVE AIR FLEET.~~

~~(a) DEFINITION OF CONTRACTOR.—Section 9511(8) of title 10, United States Code, is amended—~~

~~(1) by striking out ''or'' at the end of subparagraph (A); and~~

~~(2) by inserting before the period at the end the following: '', or (C) who owns or controls, or will own or control, new or existing aircraft and who, by contract, commits some or all of such aircraft to the Civil Reserve Air Fleet''.~~

~~(b) CONSOLIDATION OF PROVISIONS RELATING TO CONTRACTUAL COMMITMENT OF AIRCRAFT.—Subchapter II of chapter 931 of such title is amended—~~

~~(1) by redesignating subsections (b) and (c) of section 9512 as subsections (c) and (d), respectively;~~

~~(2) by redesignating subsection (a) of section 9513 as subsection (b) and transferring such subsection (as so redesignated) to section 9512, and inserting such subsection after subsection (a);~~

~~(3) by redesignating subsection (b) of section 9513 as subsection (c) and transferring such sub-~~

~~section (as so redesignated) to the end of section 9512;~~

~~(4) in subsection (c) of section 9512, as redesignated by paragraph (1), by striking out ''the terms required by section 9513 of this title and'';~~

~~(5) in subsection (e) of section 9512, as redesignated and transferred to such section by paragraph (3), by striking out ''under section 9512 of this title'' and inserting in lieu thereof ''entered into under this section''; and~~

~~(6) by striking out the heading of section 9513.~~

~~(c) USE OF MILITARY INSTALLATIONS BY CONTRACTORS.—~~

~~(1) AUTHORITY.—Subchapter II of such chapter, as amended by subsection (b), is further amended by adding at the end the following new section 9513:~~

~~''§ 9513. Use of military installations by Civil Reserve Air Fleet contractors~~

~~''(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—~~

~~''(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and~~

~~"(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.~~

~~"(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.~~

~~"(b) PURPOSES OF USE.—A contract entered into under subsection (a) may authorize use of a designated installation as a weather alternate, a technical stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation within the United States, for other commercial purposes. Notwithstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.~~

~~"(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding the provisions of section 1107(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1507(b)), and any other provision of law, amounts collected in a fiscal year~~

~~from a contractor for services or supplies or as landing fees or other charges authorized to be collected for use of an installation under a contract entered into under subsection (a) shall be credited to an appropriation for such fiscal year for the military department that has jurisdiction over such installation.~~

~~''(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the Air Force (and any other armed force having jurisdiction over any installation covered by the contract) from all actions, suits, or claims of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.~~

~~''(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary concerned may, without providing prior notice, deny access to an installation designated under the contract when the Secretary determines that it is necessary to do so in order to meet military exigencies.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by striking out the item relating to~~

~~section 9513 and inserting in lieu thereof the following:~~

~~"9513. Use of military installations by Civil Reserve Air Fleet contractors.".~~

~~SEC. 3033. REPEAL OF NAVY AUTHORITY REGARDING RESEARCH AND DEVELOPMENT, PROCUREMENT, AND CONSTRUCTION OF GUIDED MISSILES.~~

~~(a) REPEAL OF OBSOLETE AUTHORITY.—Section 7201 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7201.~~

~~SEC. 3034. EXCHANGE OF SCIENTIFIC PERSONNEL.~~

~~(a) EXCHANGE AUTHORITY.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:~~

~~"§ 2350j. Exchange of scientific personnel~~

~~"(a) INTERNATIONAL EXCHANGE AGREEMENTS AUTHORIZED.—The Secretary of Defense is authorized to enter into agreements with the governments of allies of the United States and other friendly foreign countries for the exchange of military and civilian scientific personnel of the Department of Defense and military and civilian scientific personnel of the defense ministries of such foreign governments.~~

~~"(b) ASSIGNMENT OF PERSONNEL.—Pursuant to an agreement entered into under subsection (a), personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense, and personnel of the Department of Defense may be assigned to positions in the defense ministry of that foreign government. An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of such personnel to positions in private industry that support the defense ministry of such foreign government. A specific position and the individual to be assigned to that position shall be acceptable to both governments.~~

~~"(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—Each government shall be required under an agreement authorized by subsection (a) to provide personnel having qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.~~

~~"(d) PAYMENT OF PERSONNEL COSTS.—Each government shall pay the salary, per diem, cost of living, travel, cost of language or other training, and other costs (except for cost of temporary duty directed by the host government and costs incident to the use of host government facilities in the performance of assigned duties) for its own~~

~~personnel in accordance with the laws and regulations of such government that pertain to such matters.''.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by adding at the end the following new item:~~

~~''2350j. Exchange of scientific personnel.''.~~

~~SEC. 3035. REPEAL OF AUTHORITY FOR SECRETARY OF THE NAVY TO PROVIDE TEMPORARY RELIEF FOR CONTRACTORS AND CONTRACTOR EMPLOYEES FROM LOSSES CAUSED BY ENEMY ACTION.~~

~~(a) REPEAL.—Section 7213 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7213.~~

~~SEC. 3036. REPEAL OF AUTHORITY FOR SECRETARY OF THE NAVY TO SELL DEGAUSSING EQUIPMENT.~~

~~(a) REPEAL.—Section 7230 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7230.~~

~~**SEC. 3037. REPEAL OF AUTHORITY FOR ALTERNATIVE USE OF APPROPRIATIONS FOR CONSTRUCTION OR CONVERSION OF VESSELS.**~~

~~(a) REPEAL.—Section 7296 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7296.~~

~~**SEC. 3038. REPEAL OF AUTHORITY FOR CONVERSION OF COMBATANT AND AUXILIARY NAVAL VESSELS.**~~

~~(a) REPEAL.—Section 7298 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7298.~~

~~**SEC. 3039. CONSTRUCTION OF COMBATANT AND ESCORT VESSELS AND ASSIGNMENT OF VESSEL PROJECTS.**~~

~~(a) REPEAL OF OBSOLETE AND INTERNALLY INCONSISTENT PROVISIONS.—Section 7299a of title 10, United States Code, is amended—~~

~~(1) by striking out subsection (a); and~~

~~(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.~~

~~(b) CONFORMING AMENDMENT.—Subsection (b) of such section, as redesignated by subsection (a)(2), is amended in paragraph (2) by striking out ''subsection (a) or''.~~

~~SEC. 3040. REPEAL OF REQUIREMENT FOR ESTIMATES IN CONNECTION WITH BIDS ON CONSTRUCTION OF NAVAL VESSELS.~~

~~(a) REPEAL.—Section 7301 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7301.~~

~~SEC. 3041. REPEAL OF REQUIREMENT FOR CONSTRUCTION OF VESSELS ON PACIFIC COAST.~~

~~(a) REPEAL.—Section 7302 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7302.~~

~~SEC. 3042. FITNESS OF NAVAL VESSELS: EXAMINATION; STRIKING UNFIT VESSELS; DISPOSAL.~~

~~(a) CONSOLIDATION AND REVISION OF AUTHORITY.—~~

~~(1) AUTHORITY.—Section 7304 of title 10, United States Code, is amended to read as follows:~~

~~"§ 7304. Fitness of vessels: examination; striking from Naval Vessel Register; disposal~~

~~"(a) TRIENNIAL EXAMINATION OF VESSELS REQUIRED.—The Secretary of the Navy shall designate boards of naval officers to examine all naval vessels, including unfinished vessels. Each vessel shall be examined at least once every three years if practicable.~~

~~"(b) BOARD RECOMMENDATIONS.—A board designated under subsection (a) shall recommend to the Secretary of the Navy in writing which vessels, if any, should be stricken from the Naval Vessel Register. In making such recommendations, the board shall consider whether a vessel is unfit for service or whether an unfinished vessel cannot be finished without disproportionate expense.~~

~~"(c) ACTION OF THE SECRETARY.—If the Secretary concurs with a board's recommendation that a vessel be stricken from the Naval Vessel Register, the Secretary shall strike the name of that vessel from the Naval Vessel Register.~~

~~"(d) APPRAISAL OF STRICKEN VESSEL.—The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register.~~

~~"(e) SALE OF STRICKEN VESSEL.—(1) When the Secretary determines that it is in the national interest, the Secretary may sell a vessel stricken from the Naval Vessel Register.~~

~~"(2) A vessel stricken from the Naval Vessel Register and not subject to disposition under any other law, may be sold at public sale to the highest acceptable bidder, regardless of the vessel's appraised value, after being advertised for sale for a period of not less than 30 days.~~

~~"(3) If the Secretary determines that the bid prices received after advertising are not reasonable and that readvertising will serve no useful purpose, the vessel may be sold by negotiation to the highest acceptable offeror, but only if—~~

~~"(A) each responsible bidder has been notified of the intent to negotiate a sale of the vessel and has been given a reasonable opportunity to negotiate with the Secretary for the purchase of that vessel; and~~

~~"(B) the negotiated price—~~

~~"(i) is higher than the highest rejected price of any responsible bidder; or~~

~~"(ii) is reasonable and is in the national interest.~~

~~"(f) OTHER TRANSFERS.—(1) The Secretary of the Navy is authorized to transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register or any captured vessel to—~~

~~"(A) any State, Commonwealth, or possession of the United States, or to any municipal corporation or political subdivision thereof;~~

~~"(B) the District of Columbia; or~~

~~"(C) any not-for-profit or nonprofit entity.~~

~~"(2) A transfer under paragraph (1) shall be made at no cost to the United States and may not be made unless the transferee agrees to maintain the vessel in a condition satisfactory to the Secretary of the Navy.~~

~~"(g) USE FOR EXPERIMENTAL PURPOSES.—The Secretary of the Navy is authorized to use for experimental purposes any vessel stricken from the Naval Vessel Register. A vessel so used shall first be stripped to the maximum extent practicable. The proceeds received from stripping the vessel shall be credited to appropriations available for the procurement of the scrapping services needed for stripping of that vessel. Excess receipts shall be deposited into the general fund of the Treasury.~~

~~"(h) INAPPLICABILITY OF OTHER LAW.—The provisions of title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) do not apply to the disposition of a naval vessel under this section.~~

~~"(i) LIMITATION.—Notwithstanding any other provision of law, no battleship, aircraft carrier, cruiser, de-~~

~~stroyer, or submarine of the Navy may be sold, transferred, or otherwise disposed of, unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.''.~~

~~(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 633 of such title is amended to read as follows:~~

~~''7304. Fitness of vessels: examination; striking from Naval Vessel Register; disposal.''.~~

~~(b) REPEAL OF SUPERSEDED PROVISIONS.—~~

~~(1) REPEAL.—Sections 7305, 7306, 7307, and 7308 of title 10, United States Code, are repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the items relating to such sections.~~

~~SEC. 3043. REPEAL OF POLICY ON CONSTRUCTING COMBATANT VESSELS.~~

~~(a) REPEAL.—Section 7310 of title 10, United States Code, is repealed.~~

~~(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7310.~~

~~SEC. 3044. NAVAL SALVAGE FACILITIES.~~

~~(a) CONSOLIDATION OF AUTHORITY.—Chapter 637 of title 10, United States Code, is amended—~~

~~(1) in section 7361—~~

~~(A) in subsection (a), by inserting ''AUTHORITY TO PROVIDE FACILITIES BY CONTRACT OR OTHERWISE.—'' after ''(a)'';~~

~~(B) in subsection (b), by inserting ''CONTRACTS AFFECTING THE DEPARTMENT OF TRANSPORTATION.—'' after ''(b)''; and~~

~~(C) in subsection (c)—~~

~~(i) by inserting ''LIMITATION ON TERM CONTRACTS.—'' after ''(c)''; and~~

~~(ii) by striking out ''under this section'' and inserting in lieu thereof ''under subsection (a)'';~~

~~(2) by designating the text of section 7362 as subsection (d) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;~~

~~(3) in subsection (d) of section 7361 of such title, as so designated and transferred, by inserting before ''The Secretary'' the following: ''COMMERCIAL USE OF NAVAL VESSELS AND EQUIPMENT.—'';~~

~~(4) by designating the text of section 7363 as subsection (e) and transferring such text, as so des-~~

~~ignated, to the end of section 7361 of title 10, United States Code;~~

~~(5) in subsection (e) of section 7361 of such title, as so designated and transferred, by inserting before ''Before any salvage vessel'' the following: ''CONDITIONS FOR TRANSFER OF EQUIPMENT.—'';~~

~~(6) by designating the text of section 7365 as subsection (f) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;~~

~~(7) in subsection (f) of section 7361 of such title, as so designated and transferred, by inserting before ''The Secretary'' the following: ''SETTLEMENT OF CLAIMS.—'';~~

~~(8) by designating the text of section 7366 as subsection (g) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;~~

~~(9) in subsection (g) of section 7361 of such title, as so designated and transferred—~~

~~(A) by inserting before ''Not more than'' the following: ''LIMITATION ON APPROPRIATIONS.—'';~~ ~~and~~

~~(B) by striking out ''this chapter'' and inserting in lieu thereof ''this section'';~~

~~(10) by designating the text of section 7367 as subsection (h) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;~~

~~(11) in subsection (h) of section 7361 of such title, as so designated and transferred—~~

~~(A) by inserting before ''Money received'' the following: ''DISPOSITION OF RECEIPTS.—'';~~ ~~and~~

~~(B) by striking out ''this chapter'' in the first sentence and inserting in lieu thereof ''this section'';~~

~~(12) by striking out the section headings for sections 7362, 7363, 7365, 7366, and 7367;~~

~~(13) by striking out the heading for section 7361 and inserting in lieu thereof the following:~~

~~''§ 7361. Navy support for salvage operations'';~~

~~and~~

~~(14) in the table of sections at the beginning of such chapter—~~

~~(A) by striking out the item relating to section 7361 and inserting in lieu thereof the following:~~

~~''7361. Navy support for salvage operations.'';~~

~~and~~

(B) by striking out the items relating to sections 7362, 7363, 7365, 7366, and 7367.

Subtitle D—Department of Defense Commercial and Industrial Activities

SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.

(a) CONSOLIDATION AND REVISION OF AUTHORITY.—

(1) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, as amended by section 3025(a)(1), is further amended by adding at the end the following:

"§ 2541. Factories and arsenals: manufacture at

''(a) The Secretary of Defense or the Secretary of a military department may have supplies needed for the Department of Defense or such military department, as the case may be, made in factories or arsenals owned by the United States.

''(b) The Secretary of Defense or the Secretary of the military department concerned may abolish any United States arsenal that such Secretary considers unnecessary.''.

(2) TECHNICAL AMENDMENT.—The table of sections at the beginning of subchapter V of such chapter, as amended by section 3025(a)(2), is fur-

~~ther amended by adding at the end the following new item:~~

~~"2541. Factories and arsenals: manufacture at.".~~

~~(b) REPEAL OF SUPERSEDED AUTHORITY.—~~

~~(1) ARMY AUTHORITY.—~~

~~(A) REPEAL.—Section 4532 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4532.~~

~~(2) AIR FORCE AUTHORITY.—~~

~~(A) REPEAL.—Section 9532 of title 10, United States Code, is repealed.~~

~~(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9532.~~

~~SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED ADVISORY AND ASSISTANCE SERVICES.~~

~~(a) FUNDING TO BE IDENTIFIED IN BUDGET.—Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:~~

~~"(g)(1) The Director of the Office of Management and Budget shall establish the funding for consulting services for each department and agency as a separate object~~

~~class in each budget annually submitted to the Congress under this section.~~

~~''(2) For purposes of this subsection, consulting services include—~~

~~''(A) management and professional support services;~~

~~''(B) studies, analyses, and evaluations;~~

~~''(C) engineering and technical services (excluding routine engineering services such as automated data processing and architect and engineering contracts); and~~

~~''(D) research and development.''.~~

~~(b) REPEAL OF SOURCE LAW.—Section 512 of Public Law 102–394 (106 Stat. 1826) is repealed.~~

~~(c) REPEAL OF SUPERSEDED PROVISION.—~~

~~(1) DOD SPECIFIC LAW.—Section 2212 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by striking out the item relating to section 2212.~~

~~Subtitle E—Fuel- and Energy-Related Laws~~

~~SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS FOR STORAGE, HANDLING, OR DISTRIBUTION.~~

~~(a) REVISION OF AUTHORITY.—Section 2388 of title 10, United States Code, is amended—~~

~~(1) by striking out subsections (a) and (b) and inserting in lieu thereof the following:~~

~~''(a) AUTHORITY TO CONTRACT.—The Secretary of Defense and the Secretary of a military department may each contract for storage facilities for, or the storage, handling, or distribution of, liquid fuels and natural gas.~~

~~''(b) PERIOD OF CONTRACT.—The period of a contract entered into under subsection (a) may not exceed 5 years. However, the contract may provide options for the Secretary to renew the contract for additional periods of not more than 5 years each, but not for more than a total of 20 years.'';~~ ~~and~~

~~(2) in subsection (c), by inserting ''OPTION TO PURCHASE FACILITY.—'' after ''(c)''.~~

~~(b) CLERICAL AMENDMENTS.—~~

~~(1) SECTION HEADING.—The heading of such section is amended to read as follows:~~

~~"§ 2388. Liquid fuels and natural gas: contracts for storage, handling, or distribution".~~

~~(2) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of chapter 141 of title 10, United States Code, is amended to read as follows:~~

~~"2388. Liquid fuels and natural gas: contracts for storage, handling, or distribution.".~~

~~SEC. 3062. ACQUISITION OF PETROLEUM AND NATURAL GAS: AUTHORITY TO WAIVE PROCEDURES.~~

~~(a) ACQUISITION, SALE, AND EXCHANGE OF NATURAL GAS.—Section 2404 of title 10, United States Code, is amended—~~

~~(1) in subsection (a)—~~

~~(A) in the matter above paragraph (1), by inserting "or natural gas" after "petroleum";~~

~~(B) in paragraph (1)—~~

~~(i) by inserting "or natural gas market conditions, as the case may be," after "petroleum market conditions"; and~~

~~(ii) by inserting "or acquisition of natural gas, respectively," after "acquisition of petroleum"; and~~

~~(C) in paragraph (2), by inserting "or natural gas, as the case may be," after "petroleum"; and~~

~~(2) in subsection (b), by inserting ''or natural gas'' in the second sentence after ''petroleum''.~~

~~(b) EXPANSION OF EXCHANGE AUTHORITY.—Subsection (c) of such section is amended to read as follows:~~

~~''(c) EXCHANGE AUTHORITY.—The Secretary of Defense may acquire petroleum, petroleum-related services, natural gas, or natural gas-related services by exchange of petroleum, petroleum-related services, natural gas, or natural gas-related services.''.~~

~~(c) SALE OF PETROLEUM AND NATURAL GAS.—Such section is amended—~~

~~(1) by redesignating subsection (d) as subsection (e); and~~

~~(2) by inserting after subsection (c) the following new subsection (d):~~

~~''(d) AUTHORITY TO SELL.—The Secretary of Defense may sell petroleum or natural gas of the Department of Defense if the Secretary determines that the sale would be in the public interest. The proceeds of such a sale shall be credited to appropriations of the Department of Defense for the fiscal year in which received and shall be available for such fiscal year for the acquisition of petroleum, petroleum-related services, natural gas, or natural gas-related services.''.~~

~~(d) TECHNICAL AND CLERICAL AMENDMENTS.—~~

(1) SUBSECTION CAPTIONS.—Section 2404 of title 10, United States Code, is amended—

(A) in subsection (a), by inserting ''WAIVER AUTHORITY.—'' after ''(a)'';

(B) in subsection (b), by inserting ''SCOPE OF WAIVER.—'' after ''(b)''; and

(C) in subsection (e), as redesignated by subsection (c)(1), by inserting ''PETROLEUM DEFINED.—'' after ''(e)''.

(2) SECTION HEADING.—The heading of such section is amended to read as follows:

''§ 2404. Acquisition of petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority''.

(3) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of chapter 141 of title 10, United States Code, is amended to read as follows:

''2404. Acquisition of petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority.''.

Subtitle F—Fiscal Statutes

SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DEPARTMENT TO COVER OBLIGATIONS OF ANOTHER AGENCY OF DEPARTMENT OF DEFENSE.

Subsection (c)(2) of section 3321 of title 31, United States Code, is amended by striking out ''military departments of the'' and inserting in lieu thereof ''The''.

Subtitle G—Miscellaneous

SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.

Section 2202 of title 10, United States Code, is amended to read as follows:

''§ 2202. Obligation of funds: limitation

''The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.''.

SEC. 3082. REPEAL OF PROVISIONS FOR THE ENCOURAGEMENT OF AVIATION.

(a) REPEAL.—Chapter 135 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A of such title and the begin-

ning of part IV of such subtitle are amended by striking out the item relating to chapter 135.

SEC. 3083. REPEAL OF REQUIREMENTS REGARDING PRODUCT EVALUATION ACTIVITIES.

(a) REPEAL.—Section 2369 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item related to section 2369.

SEC. 3084. REPEAL OF PRICE ADJUSTMENT AUTHORITY AND PURCHASE AUTHORITY RELATING TO THE PROCUREMENT OF MILK.

(a) REPEAL.—Section 2389 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item related to section 2389.

SEC. 3085. CODIFICATION AND REVISION OF LIMITATION ON LEASE OF VESSELS, AIRCRAFT, AND VEHICLES.

(a) LIMITATION.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

~~"§ 2410e. Lease of vessels, aircraft, and vehicles~~

~~''The head of an agency named in paragraph (1), (2), (3), or (4) of section 2303(a) of this title may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement without previously having considered all costs of such lease (including estimated termination liability) and determined in writing that such lease is in the best interest of the Government.''.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:~~

~~''2410e. Leases of vessels, aircraft, and vehicles.''.~~

~~(b) REPEAL OF SUPERSEDED PROVISION.—Section 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C. 2401 note) is repealed.~~

~~TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS~~

~~Subtitle A—Simplified Acquisition Threshold~~

~~PART I—ESTABLISHMENT OF THRESHOLD~~

~~SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.~~

~~(a) TERM DEFINED.—Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) is amended to read as follows:~~

~~"(11) The term 'simplified acquisition threshold' means $100,000.".~~

~~(b) INTERIM REPORTING RULE.—Until October 1, 1996, contracting activities shall continue to report procurement awards with a dollar value of at least $25,000, but less than $100,000, in conformity with the procedures for the reporting of a contract award in excess of $25,000 that were in effect on October 1, 1992.~~

~~PART II—SIMPLIFICATION OF PROCEDURES~~

~~SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.~~

~~The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:~~

~~''SIMPLIFIED ACQUISITION PROCEDURES~~

~~''SEC. 29. (a) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not in excess of the simplified acquisition threshold.~~

~~''(b) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a).~~

~~''(c) In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.''.~~

~~SEC. 4012. SMALL BUSINESS RESERVATION.~~

~~Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended to read as follows:~~

~~''(j)(1) Each contract for the procurement of goods and services that has an anticipated value not in excess of the simplified acquisition threshold and that is subject to simplified acquisition procedures prescribed pursuant to section 29 of the Office of Federal Procurement Policy Act shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain of-~~

~~fers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being procured.~~

~~''(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.~~

~~''(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not in excess of the simplified acquisition threshold under the authority of section 8(a) of this Act, section 2323 of title 10, United States Code, or section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note).~~

~~''(4) In utilizing procedures referred to in paragraph (1), contracting officers shall, wherever circumstances permit, provide for the use of fast payment terms and disbursement of payment through electronic fund transfer.''.~~

~~SEC. 4013. PROCUREMENT NOTICE.~~

~~(a) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (a) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—~~

~~(1) in paragraph (1), by striking out ''the small purchase threshold'' each place it appears and inserting in lieu thereof ''$25,000''; and~~

~~(2) in paragraph (3)(B), by inserting after ''(B)'' the following: ''in the case of a contract or order expected to exceed the simplified acquisition threshold,''.~~

~~(b) CONTENT OF NOTICE.—Subsection (b) of such section is amended—~~

~~(1) by striking out ''and'' at the end of paragraph (4);~~

~~(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and~~

~~(3) by adding at the end the following:~~

~~''(6) in the case of a contract in an amount estimated to exceed the $25,000 but not to exceed the simplified acquisition threshold—~~

~~''(A) a description of the procedures to be used in awarding the contract; and~~

~~''(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.''.~~

~~(c) NOTICE UNDER THE SMALL BUSINESS ACT.—~~

~~(1) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (c) of section 8 of the Small Business Act (15 U.S.C. 637) is amended—~~

~~(A) in paragraph (1), by striking out ''the small purchase threshold'' each place it appears and inserting in lieu thereof ''$25,000''; and~~

~~(B) in paragraph (3)(B), by inserting after ''(B)'' the following: ''in the case of a contract or order estimated to exceed the simplified acquisition threshold,''.~~

~~(2) CONTENT OF NOTICE.—Subsection (f) of such section is amended—~~

~~(A) by striking out ''and'' at the end of paragraph (4);~~

~~(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and~~

~~(C) by adding at the end the following:~~

~~''(6) in the case of a contract in an amount estimated to exceed the $25,000 but not to exceed the simplified acquisition threshold—~~

~~''(A) a description of the procedures to be used in awarding the contract; and~~

~~''(B) a statement specifying the periods for prospective offerors and the contracting officer~~

to take the necessary preaward and award actions.''.

PART III—INAPPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Subpart A—Generally

SEC. 4021. INAPPLICABILITY OF FUTURE ENACTED PROCUREMENT LAWS TO CONTRACTS NOT EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4011, is further amended by adding at the end the following new section:

''INAPPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

''SEC. 30. (a) IN GENERAL.—The applicability of a provision of law described in subsection (b) to contracts not in excess of the simplified acquisition threshold may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

''(b) REFERENCED LAW.—A provision of law referred to in subsection (a) is any provision of law enacted after the date of the enactment of the Federal Acquisition

~~Streamlining Act of 1993 that, as determined by the Administrator for Federal Procurement Policy, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government.''.~~

~~Subpart B—Armed Services Acquisitions~~

~~SEC. 4031. INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.~~

~~Section 2306(b) of title 10, United States Code, is amended by adding at the end the following: ''This subsection does not apply to a contract that is not in excess of the simplified acquisition threshold.''.~~

~~SEC. 4032. INAPPLICABILITY OF PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.~~

~~Section 2402 of title 10, United States Code, is amended by adding at the end the following new subsection:~~

~~''(c) This section does not apply to a contract that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.~~

~~SEC. 4033. INAPPLICABILITY OF AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.~~

~~Section 2313 of title 10, United States Code, as amended by section 2201, is further amended by adding at the end of subsection (e) the following:~~

~~''(2) A contract that is not in excess of the simplified acquisition threshold.''.~~

~~SEC. 4034. INAPPLICABILITY OF REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.~~

~~Section 2384(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:~~

~~''(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that does not exceed the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.~~

~~SEC. 4035. INAPPLICABILITY OF PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.~~

~~Section 2393(d) of title 10, United States Code, is amended in the second sentence by striking out ''above'' and all that follows and inserting in lieu thereof ''in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.~~

SEC. 4036. INAPPLICABILITY OF PREFERENCE FOR USE OF UNITED STATES VESSELS FOR TRANSPORTING SUPPLIES OF THE ARMED FORCES.

Section 2631 of title 10, United States Code, is amended by adding at the end the following: ''The first sentence does not apply to a contract for the transportation of those supplies by sea if the contract does not exceed the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

Subpart C—Civilian Agency Acquisitions

SEC. 4041. INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.

Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) is amended by adding at the end the following: ''The preceding sentence does not apply to a contract that is not in excess of the simplified acquisition threshold.''.

SEC. 4042. INAPPLICABILITY OF PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.

Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g) is amended by adding at the end the following new subsection:

~~''(c) This section does not apply to a contract that is not in excess of the simplified acquisition threshold.''.~~

~~SEC. 4043. INAPPLICABILITY OF AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.~~

~~Section 304B of the Federal Property and Administrative Services Act of 1949, as added by section 2251(a), is amended by adding at the end of subsection (e) the following:~~

~~''(2) A contract that is not in excess of the simplified acquisition threshold.''.~~

~~Subpart D—Acquisitions Generally~~

~~SEC. 4051. INAPPLICABILITY OF LIMITATION ON USE OF FUNDS TO INFLUENCE CERTAIN FEDERAL ACTIONS.~~

~~Section 1352(e)(2)(B) of title 31, United States Code, is amended by striking out ''$100,000'' and inserting in lieu thereof ''the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.~~

~~SEC. 4052. INAPPLICABILITY OF REQUIREMENT FOR CONTRACT CLAUSE RELATING TO KICKBACKS.~~

~~Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57) is amended by adding at the end the following new subsection:~~

~~''(d) Subsections (a) and (b) do not apply to a prime contract that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.~~

~~**SEC. 4053. INAPPLICABILITY OF THE MILLER ACT TO CONTRACTS BELOW THE SIMPLIFIED ACQUISITION THRESHOLD.**~~

~~(a) IN GENERAL.—~~

~~(1) CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD.—The Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the ''Miller Act'', is amended by adding at the end the following new section:~~

~~''SEC. 5. This Act does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.~~

~~(2) CONFORMING AMENDMENT.—Subsection (a) of the first section of such Act is amended by striking out '', exceeding $25,000 in amount,''.~~

~~(b) ALTERNATIVE PAYMENT PROTECTIONS.—~~

~~(1) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers~~

of labor and materials on contracts referred to in paragraph (2).

(2) COVERED CONTRACTS.—The protections required by paragraph (1) shall apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act that are in excess of $25,000 but not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(3) MILLER ACT REFERENCE.—The Miller Act referred to in paragraph (2) means the Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the ''Miller Act''.

SEC. 4054. INAPPLICABILITY OF CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(a) IN GENERAL.—Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 329) is amended by adding at the end the following new subsection:

''(c) This title does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(b) CONFORMING AMENDMENT.—Section 107(a) of such Act (40 U.S.C. 333(a)) is amended by inserting after ''It shall be a condition of each contract'' the following: ''(other than a contract referred to in section 103(c))''.

SEC. 4055. INAPPLICABILITY OF THE DRUG-FREE WORKPLACE ACT OF 1988.

Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of the Anti-Drug Abuse Act of 1988; Public Law 100–690; 41 U.S.C. 701(a)(1)) is amended by striking out ''of $25,000 or more from any Federal agency'' and inserting in lieu thereof ''in excess of the simplified acquisition threshold (as defined in section 4(11) of such Act (41 U.S.C. 403(11))) by any Federal agency''.

SEC. 4056. INAPPLICABILITY OF A REQUIREMENT IN THE MERCHANT MARINE ACT, 1936, TO SHIP ON AMERICAN-FLAG COMMERCIAL VESSELS.

Section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1241(b)) is amended by adding at the end the following new paragraph:

''(3) Paragraph (1) does not apply to a contract for transportation on ocean vessels in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))). The gross tonnage trans-

ported under such a contract may not be counted for purposes of determining the minimum gross tonnage required to be transported on privately owned United States-flag commercial vessels or for purposes of satisfying such requirement.''.

SEC. 4057. INAPPLICABILITY OF CERTAIN PROCUREMENT INTEGRITY REQUIREMENTS.

(a) CERTIFICATION REQUIREMENT.—Subsection (e)(7)(A) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by striking out ''$100,000'' and inserting in lieu thereof ''the simplified acquisition threshold''.

(b) CONTRACT CLAUSE REQUIREMENT.—Subsection (g)(1) of such section is amended by inserting after ''awarded by a Federal agency'' the following: ''(other than a contract in an amount that is not in excess of the simplified acquisition threshold)''.

PART IV—CONFORMING AMENDMENTS

SEC. 4071. ARMED SERVICES ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section 2304(g) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out ''small purchases of property and services'' and inserting in lieu thereof ''purchases of property and services not in excess of the simplified acquisition threshold'';

~~(2) by striking out paragraph (2);~~

~~(3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;~~

~~(4) in paragraph (2), as so redesignated—~~

~~(A) by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''; and~~

~~(B) by striking out ''small purchase procedures'' and inserting in lieu thereof ''simplified procedures''; and~~

~~(5) in paragraph (3), as redesignated by paragraph (3), by striking out ''small purchase procedures'' and inserting in lieu thereof ''simplified procedures''.~~

~~(b) SOLICITATION CONTENT REQUIREMENT.—Section 2305(a)(2) of title 10, United States Code, is amended by striking out ''small purchases)'' in the matter above subparagraph (A) and inserting in lieu thereof ''purchases not in excess of the simplified acquisition threshold)''.~~

~~(c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A) of title 10, United States Code, is amended by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''.~~

~~SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.~~

~~(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended—~~

~~(1) in paragraph (1), by striking out ''small purchases of property and services'' and inserting in lieu thereof ''purchases of property and services not in excess of the simplified acquisition threshold'';~~

~~(2) by striking out paragraph (2);~~

~~(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively;~~

~~(4) in paragraph (2), as so redesignated—~~

~~(A) by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''; and~~

~~(B) by striking out ''small purchase procedures'' and inserting in lieu thereof ''simplified procedures'';~~

~~(5) in paragraph (3), as redesignated by paragraph (3), by striking out ''small purchase procedures'' and inserting in lieu thereof ''simplified procedures''; and~~

~~(6) in paragraph (5), as redesignated by paragraph (3), by striking out ''the term 'small purchase threshold' has the meaning'' and inserting in lieu~~

~~thereof ''the term 'simplified acquisition threshold' has the meaning''.~~

~~(b) SOLICITATION CONTENT REQUIREMENT.—Section 303A(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(b)) is amended by striking out ''small purchases)'' in the matter above paragraph (1) and inserting in lieu thereof ''purchases not in excess of the simplified acquisition threshold)''.~~

~~(c) COST TYPE CONTRACTS.—Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)) is amended in the third sentence by striking out ''either $25,000'' and inserting in lieu thereof ''either the simplified acquisition threshold''.~~

~~SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY ACT.~~

~~Section 19(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 417(a)) is amended by striking out ''procurements, other than small purchases,'' and inserting in lieu thereof ''procurements in excess of the simplified acquisition threshold''.~~

~~SEC. 4074. SMALL BUSINESS ACT.~~

~~(a) DEFINITION.—Section 3(m) of the Small Business Act (15 U.S.C. 632(m)) is amended by striking out '' 'small purchase threshold' '' and inserting in lieu thereof '' 'simplified acquisition threshold' ''.~~

(b) USE OF SIMPLIFIED ACQUISITION THRESHOLD TERM.—Section 8(d)(2)(A) of the Small Business Act (15 U.S.C. 637(d)(2)(A)) is amended by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''.

PART V—REVISION OF REGULATIONS

SEC. 4081. REVISION REQUIRED.

(a) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall review the Federal Acquisition Regulation to identify regulations that are applicable to acquisitions in excess of a specified amount that is less than $100,000. The Council shall amend the regulations so identified as necessary to provide that such regulations do not apply to acquisitions that are not in excess of the simplified acquisition threshold. The preceding sentence does not apply in the case of a regulation for which such an amendment would not be in the national interest, as determined by the Council.

(b) SUPPLEMENTAL REGULATIONS.—The head of each Federal agency that has issued regulations, policies, or procedures referred to in subsection (c)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(2)) shall identify any such regulations, policies, or procedures

~~that are applicable to acquisitions in excess of a specified amount that is less than $100,000. The agency head shall amend the regulations so identified as necessary to provide that such regulations, policies, and procedures do not apply to acquisitions that are not in excess of the simplified acquisition threshold. The preceding sentence does not apply in the case of a regulation, policy, or procedure for which such an amendment would not be in the national interest, as determined by the agency head.~~

~~(c) COMPLETION OF ACTIONS.—All actions under this section shall be completed not later than 180 days after the date of the enactment of this Act.~~

~~(d) DEFINITIONS.—In this section:~~

~~(1) The term ''simplified acquisition threshold'' has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as amended by section 4001.~~

~~(2) The term ''Federal agency'' has the meaning given such term in section 3(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 472(b)).~~

~~Subtitle B—Socioeconomic and Small Business Laws~~

~~SEC. 4101. ARMED SERVICES ACQUISITIONS.~~

~~(a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO CONSTRUCTION OF NAVAL VESSELS.—Section 7299 of title 10, United States Code, is amended to read as follows: ''No contract for the construction, alteration, furnishing, or equipping of a naval vessel shall be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to as the 'Davis-Bacon Act', or to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the President determines that such requirement is in the interest of national defense.''.~~

~~(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:~~

~~''§ 7299. Contracts: applicability of certain labor laws''.~~

~~(2) The item relating to such section in the table of sections at the beginning of chapter 633 of title 10, United States Code, is amended to read as follows:~~

~~''7299. Contracts: applicability of certain labor laws.''.~~

~~SEC. 4102. ACQUISITIONS GENERALLY.~~

~~(a) REPEAL OF EXECUTED REPORTING REQUIREMENT.—Section 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2516) is repealed.~~

~~(b) WALSH-HEALEY ACT.—~~

~~(1) REPEAL OTHER THAN FOR CERTAIN DEFINITIONAL PURPOSES. The Act of June 30, 1936 (41 U.S.C. 35 et seq.), commonly referred to as the ''Walsh-Healey Act'', is amended to read as follows:~~

~~''SECTION 1. (a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.~~

~~''(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms 'regular dealer' and 'manufacturer', as defined pursuant to subsection (a).''~~

~~(2) CONFORMING AMENDMENT. Section 2304(h) of title 10, United States Code, is amended to read as follows:~~

~~''(h) For the purposes of the Act entitled 'An Act relating to the rate of wages for laborers and mechanics~~

~~employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a et seq.), purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures.''.~~

~~(c) REPEAL OF REDUNDANT REQUIREMENT REGARDING APPLICABILITY OF THE DAVIS-BACON ACT AND THE WALSH-HEALEY ACT.—Section 308 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 258) is repealed.~~

~~(d) PROHIBITION ON CONVICT LABOR AND PRISON GOODS.—No agency of the United States shall purchase any goods, wares or merchandise whose transportation in interstate commerce, or whose importation, is prohibited by section 1761 of title 18, United States Code. The preceding sentence does not apply to a contract in an amount that does not exceed the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).~~

~~SEC. 4103. DIRECT CONTRACTING WITH SMALL BUSINESSES.~~

~~Section 8(a)(1) of the Small Business Act (15 U.S.C. 637(a)(1)) is amended in subparagraph (A) by striking~~

~~out ''In any case in which the Administration certifies'' and all that follows through ''may be agreed upon between the Administration and the procurement officer.'' and inserting in lieu thereof the following: ''In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be awarded by any such officer, such officer shall be authorized in his discretion (i) to award such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer, or (ii) to award such procurement contract directly to a socially and economically disadvantaged small business concern designated by the Administration, except that such contract may not be awarded directly to that small business concern if the small business concern requests that the award be made through the Administration.''.~~

~~Subtitle C—Miscellaneous Acquisition Laws~~

~~SEC. 4151. REPEAL OF OBSOLETE LAWS RELATING TO PROCUREMENT OF NAVAL AIRCRAFT AND COMPONENTS.~~

~~(a) AUTHORIZED NUMBER.—Section 7341 of title 10, United States Code, is repealed.~~

~~(b) CONSTRUCTION OR MANUFACTURE IN FEDERAL GOVERNMENT PLANTS.—~~

~~(1) MINIMUM PERCENTAGE.—Section 7342 of title 10, United States Code, is repealed.~~

~~(2) AUTHORIZATION UNDER CERTAIN CIRCUMSTANCES.—Section 7343 of title 10, United States Code, is repealed.~~

~~(c) ANNUAL REPORT OF NAVY AIRCRAFT REQUIREMENTS.—Section 7345 of title 10, United States Code, is repealed.~~

~~(d) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 635 of title 10, United States Code, is amended by striking out the items relating to sections 7341, 7342, 7343, and 7345.~~

SEC. 4152. REVISION AND CODIFICATION OF PROHIBITION ON USE OF FUNDS FOR DOCUMENTING ECONOMIC OR EMPLOYMENT IMPACT OF CERTAIN ACQUISITION PROGRAMS.

(a) IN GENERAL.—Subchapter I of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2246. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

''No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''2246. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.''.

~~**SEC. 4153. RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES FOR PROCUREMENT FROM A PARTICULAR SOURCE.**~~

~~(a) ARMED SERVICES ACQUISITIONS.—Section 2304 of title 10, United States Code, as amended by section 1005(b), is further amended—~~

~~(1) in subsection (c)(5), by inserting ''subject to subsection (j),'' after ''(5)''; and~~

~~(2) by adding at the end the following new subsection:~~

~~''(j)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.~~

~~''(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—~~

~~''(A) specifically refers to this subsection;~~

~~''(B) specifically identifies the particular non-Federal Government source involved; and~~

~~''(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).''.~~

~~(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—~~

~~(1) in subsection (c)(5), by inserting ''subject to subsection (h),'' after ''(5)''; and~~

~~(2) by adding at the end the following new subsection:~~

~~''(h)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.~~

~~''(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—~~

~~''(A) specifically refers to this subsection;~~

~~''(B) specifically identifies the particular non-Federal Government source involved; and~~

~~''(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).''.~~

~~TITLE V—INTELLECTUAL PROPERTY~~

~~Subtitle A—Technology Transfer~~

~~SEC. 5001. COPYRIGHT PROTECTION FOR COMPUTER PROGRAMS OF THE FEDERAL GOVERNMENT.~~

~~(a) GENERAL AUTHORITY TO COPYRIGHT.—Section 15 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710d) is amended—~~

~~(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and~~

~~(2) by inserting after subsection (a) the following new subsection (b):~~

~~"(b) RIGHTS TO COMPUTER PROGRAMS PREPARED BY GOVERNMENT EMPLOYEES.—(1) For purposes of title 17, United States Code—~~

~~"(A) a computer program prepared by an officer or employee of the Federal Government in the course of the officer's or employee's official duties shall be considered as a work made for hire within the meaning of paragraph (1) of the definition of the term 'work made for hire' set forth in section 101 of such title; and~~

~~"(B) notwithstanding section 105 of such title, the Federal Government shall be considered the author of the computer program for purposes of section 201(b) of such title.~~

~~"(2)(A) If the Federal agency concerned does not intend to register a copyright of the computer program or otherwise to promote the commercialization of the computer program, the Federal agency may enter into an agreement with the officer or employee of the Federal Government who prepared the computer program to allow such officer or employee to own a copyright protecting~~

~~such computer program under title 17, United States Code.~~

~~''(B) The agreement shall be a written instrument that satisfies the requirements of section 201(b) of title 17, United States Code.~~

~~''(C) The agreement shall include—~~

~~''(i) a reservation for the Federal Government of a nonexclusive, nontransferable, irrevocable, paid-up license to exercise all rights under the copyright by or on behalf of the Federal Government throughout the world; and~~

~~''(ii) such other reservations as the head of the Federal agency concerned considers necessary to ensure distribution and utilization of the computer program.~~

~~''(3) In this subsection, the term 'computer program' has the meaning given such term in section 101 of title 17, United States Code.''.~~

~~(b) WORKS IN CONNECTION WITH COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—~~

~~(1) COPYRIGHT PROTECTION FOR THE UNITED STATES.—Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended by adding at the end the following new subsection:~~

~~''(h) COPYRIGHT OF COMPUTER PROGRAMS.—(1) Notwithstanding section 105 of title 17, United States Code, a Federal agency may secure, on behalf of the United States as author or proprietor, copyright protection for any computer program prepared by an employee of the Federal Government in the course of work under, or work related to, a cooperative research and development agreement entered into by such Federal agency under the authority of subsection (a)(1) or under any similar authority.~~

~~''(2) A Federal agency may grant or agree to grant in advance to a collaborating party licenses or assignments for a copyright of a computer program registered pursuant to paragraph (1), or options thereto, retaining—~~

~~''(A) a nonexclusive, nontransferable, irrevocable, paid-up license to reproduce, adapt, translate, distribute, and publicly perform or display the computer program throughout the world by or on behalf of the Federal Government; and~~

~~''(B) such other rights that the Federal agency deems appropriate.''.~~

~~(2) COMPUTER PROGRAM DEFINED.—Subsection (d) of such section is amended—~~

~~(A) by striking out ''section—'' and inserting in lieu thereof ''section:'';~~

~~(B) by capitalizing the initial letter of the first word in each of paragraphs (1), (2), and (3);~~

~~(C) by striking out the semicolon at the end of paragraph (1) and inserting in lieu thereof a period;~~

~~(D) in paragraph (2), by striking out ''; and'' at the end and inserting in lieu thereof a period; and~~

~~(E) by adding at the end the following new paragraph:~~

~~''(5) The term 'computer program' has the meaning given such term in section 101 of title 17, United States Code.''.~~

~~SEC. 5002. USE OF COPYRIGHTED WORKS OF THE FEDERAL GOVERNMENT.~~

~~Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended—~~

~~(1) in subsection (a)—~~

~~(A) in paragraph (1)—~~

~~(i) by inserting ''or copyrighted works'' after ''(including licensees of inventions''; and~~

~~(ii) by striking out ''and'' at the end;~~

~~(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ''; and''; and~~

~~(C) by adding at the end the following new paragraph:~~

~~''(3) to negotiate licensing agreements consistent with section 207 of title 35, United States Code, or under other authorities (in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for copyrighted works owned by the Federal Government pursuant to subsection (h) or copyrighted works that may be voluntarily assigned to the Federal Government.''; and~~

~~(2) in subsection (b)—~~

~~(A) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:~~

~~''(2) grant or agree to grant in advance, to a collaborating party—~~

~~''(A) patent licenses or assignments, or options thereto, in any invention made in whole or in part by a laboratory employee under the agreement, retaining—~~

~~''(i) a nonexclusive, nontransferable, irrevocable, paid-up license to practice the~~

~~invention, or have the invention practiced, throughout the world by or on behalf of the Government; and~~

~~''(ii) such other rights as the Federal laboratory deems appropriate; and~~

~~''(B) copyright licenses or assignments, or options thereto, in any copyrighted work prepared in whole or in part by a laboratory employee under the agreement, retaining—~~

~~''(i) a nonexclusive, nontransferable, irrevocable, paid-up license to exercise all rights under the copyright, or have all rights under the copyright exercised, throughout the world by or on behalf of the Government; and~~

~~''(ii) such other rights as the Federal laboratory deems appropriate;~~

~~''(3) waive in advance, in whole or in part, any right of ownership which the Federal Government may have to—~~

~~''(A) any subject invention made under the agreement by a collaborating party or employee of a collaborating party, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention,~~

or have the invention practiced, throughout the world by or on behalf of the Government; or

''(B) any subject copyrighted work prepared under the agreement by a collaborating party or employee of a collaborating party, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to reproduce the copyrighted work, or have the copyrighted work reproduced, throughout the world by or on behalf of the Government;'';

(B) by striking out paragraph (5) and inserting in lieu thereof the following:

''(5) to the extent consistent with any applicable agency requirements and standards of conduct, permit an employee or former employees of the laboratory to participate in efforts to commercialize an invention that the employee or former employee made, or a copyrighted work that the employee or former employee prepared, while in the service of the United States (notwithstanding that such employee or former employee may have received royalties pursuant to section 14), but only if such employee or former employee did not participate in the selection of the collaborating party to the relevant cooperative research and development agreement or in the nego-

~~tiation of a licensing agreement under which the invention or copyrighted work, as the case may be, is being commercialized.''; and~~

~~(C) in the matter following paragraph (5)—~~

~~(i) by inserting ''or copyrighted work'' after ''any invention''; and~~

~~(ii) in clause (i), by inserting ''or to authors of copyrighted works'' after ''inventors''.~~

~~SEC. 5003. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.~~

~~(a) COPYRIGHTED WORKS.—Section 14 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c) is amended—~~

~~(1) in subsection (a)—~~

~~(A) in the matter above subparagraph (A), by striking out ''inventions under agreements'' and all that follows through ''produced the invention'' and inserting in lieu thereof ''an invention or copyrightable work under an agreement entered into by a Government-operated Federal laboratory under section 12, and an invention or copyrightable work of a Government-operated Federal laboratory licensed under sec-~~

~~tion 207 of title 35, United States Code, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention or copyrighted work'';~~

~~(B) in paragraph (1)(A)—~~

~~(i) in clause (i)—~~

~~(I) in the first sentence, by striking out ''inventor'' and all that follows and inserting in lieu thereof ''inventor or copyrighted work to the author (or the co-inventors or co-authors) if the inventor or author (or each such co-inventor or co-author) has assigned his or her rights in the invention or copyrighted work to the United States.'';~~ ~~and~~

~~(II) by striking out the second sentence;~~

~~(ii) in clause (ii)—~~

~~(I) by inserting ''or authors'' after ''inventors'' in the matter above subclause (I);~~

~~(II) by striking out ''inventor,'' in subclauses (I) and (II) and insert-~~

~~ing in lieu thereof ''inventor or author'';~~

~~(III) by inserting ''or author's copyrighted work'' in subclauses (I) and (II) after ''inventor's invention'';~~

~~(IV) in subclause (III), by inserting ''and authors'' after ''such inventors''; and~~

~~(V) in subclause (IV), by striking out ''licensed invention'' and all that follows and inserting in lieu thereof ''licensed invention between the time of the filing of the patent application and the licensing of the invention or to the technical development of a licensed copyrighted work between the time of the filing of the application for copyright registration and the licensing of the copyrighted work.''; and~~

~~(iii) by adding at the end the following new clause (iv):~~

~~''(iv) An agency that has published its intention to promulgate regulations under clause (ii) with regard to authors of copyrighted works may elect not to pay authors under clause (i) until the earlier of the date two years~~

after the date of the enactment of the Federal Acquisition Streamlining Act of 1993 or the date of the promulgation of such regulations. If an agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to the date of the enactment of the Federal Acquisition Streamlining Act of 1993. If promulgation of the regulations occurs within two years after the date of the enactment of the Federal Acquisition Streamlining Act of 1993, payments shall be made in accordance with such regulations, retroactive to such date. The agency shall retain its royalties until the author's portion is paid under either clause (i) or (ii). Such royalties may not be transferred to the agency's Government-operated laboratories under subparagraph (B) and may not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rule making under this subparagraph.'';

(C) in paragraph (1)(B)—

(i) in the matter above clause (i), by striking out ''going to the laboratory where the invention occurred'' and inserting in lieu thereof ''or copyrighted work going to the laboratory where the invention oc-

~~curred or the copyrighted work was prepared'';~~ ~~and~~

~~(ii) in clause (i)—~~

~~(I) by inserting ''or copyrighted works'' after ''licensing of inventions'';~~

~~(II) by inserting '', or copyrighted works were prepared,'' after ''inventions which occurred'';~~ ~~and~~

~~(III) by inserting ''or copyrighted work'' before ''management'';~~

~~(D) in paragraph (2), by inserting ''and authors'' after ''inventors'';~~

~~(E) in paragraph (3), by inserting ''or author'' after ''inventor'' both places it appears in the second sentence;~~ ~~and~~

~~(F) in the first sentence of paragraph (4)—~~

~~(i) by inserting '', or copyrighted work management services,'' after ''management services'';~~

~~(ii) by inserting ''or authors'' after ''inventors'';~~

~~(iii) by inserting ''or copyrighting'' after ''patenting'';~~ ~~and~~

~~(iv) by inserting ''or copyright'' after ''for any invention'';~~

~~(2) in subsection (b)—~~

~~(A) in the matter above paragraph (1), by inserting ''or copyrightable work'' after ''invention''; and~~

~~(B) in paragraph (2), by striking out ''at the time'' and all that follows and inserting in lieu thereof ''at the time the invention was made or copyrightable work was prepared,''; and~~

~~(3) in subsection (c)—~~

~~(A) in paragraph (1)—~~

~~(i) by striking out ''(1)''; and~~

~~(ii) by inserting ''or author'' after ''(including inventor''; and~~

~~(B) by striking out paragraph (2).~~

~~(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1)(B)(i)(I) shall take effect with respect to a department or agency of the Federal Government as of the date of the enactment of this Act unless, within 90 days after that date, such department or agency publishes in the Federal Register a notice of election to file a notice of proposed rulemaking with regard to authors of copyrighted works pursuant to section 14(a)(1)(A)(ii) of the~~

~~Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(A)(ii)), as amended by subsection (a)(1)(B)(ii).~~

~~SEC. 5004. EXCEPTION TO PROHIBITION ON COPYRIGHT PROTECTION FOR WORKS OF THE FEDERAL GOVERNMENT.~~

~~The text of section 105 of title 17, United States Code, is amended to read as follows:~~

~~''(a) Except as provided in subsection (b), copyright protection under this title is not available for any work of the United States Government.~~

~~''(b)(1) Subsection (a) does not preclude the United States from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.~~

~~''(2) Subsection (a) does not preclude the United States from copyright protection under this title that is authorized in section 12(h) or 15(b) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(h) or 3710d(b)).''.~~

~~Subtitle B—Government Use of Private Patents, Copyrights, and Trade Secrets~~

~~SEC. 5011. GOVERNMENT USE OR MANUFACTURE OF A PATENTED INVENTION.~~

~~(a) WITHHOLDING OF GOVERNMENT CONSENT FOR CONTRACTOR USE OR MANUFACTURE.—The second undesignated paragraph of section 1498(a) of title 28, United States Code, is amended by inserting after the first sentence the following: ''The Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall prescribe in the Federal Acquisition Regulation the circumstances under which a contracting officer may withhold authorization or consent under this paragraph. The Federal Acquisition Regulation shall provide that authorization or consent may not ordinarily be granted for contracts for the acquisition of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))).''.~~

~~(b) INJUNCTION NOT AUTHORIZED REGARDING GOVERNMENT CONTRACTOR USE OR MANUFACTURE.—Section 283 of title 35, United States Code, is amended by adding at the end the following: ''Notwithstanding the preceding sentence, no such court may grant an injunction in the case of a violation of a right secured by patent that~~

~~occurs in the performance of a Federal Government contract.''.~~

~~SEC. 5012. DEPARTMENT OF DEFENSE ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS.~~

~~(a) AUTHORIZED ACQUISITIONS.—Section 2386 of title 10, United States Code, is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:~~

~~''(3) Technical data and computer software.~~

~~''(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.''.~~

~~(b) REDUNDANT PROVISION.—~~

~~(1) REPEAL.—Section 7210 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7210.~~

~~TITLE VI—STANDARDS OF CONDUCT~~

~~Subtitle A—Ethics Provisions~~

~~SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PROCUREMENT POLICY ACT.~~

~~(a) RECUSAL.—Subsection (c) of section 27 of the Office of Procurement Policy Act (41 U.S.C. 423) is amended—~~

~~(1) in paragraph (1)—~~

~~(A) in the matter above subparagraph (A), by inserting ''only'' after ''subsection (b)(1)''; and~~

~~(B) in subparagraph (A), by inserting ''(including the modification or extension of a contract)'' after ''any procurement'';~~

~~(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof:~~

~~''(2) Whenever the head of a procuring activity approves a recusal under paragraph (1), a copy of the recusal request and the approval of the request shall be retained by such official for a period (not less than five years) specified in regulations prescribed in accordance with subsection (o).~~

~~''(3)(A) Except as provided in subparagraph (B), all recusal requests and approvals of recusal requests pursu-~~

~~ant to this subsection shall be made available to the public on request.~~

~~''(B) Any part of a recusal request or an approval of a recusal request that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public otherwise required under subparagraph (A).''; and~~

~~(3) in paragraph (4), by striking out ''competing contractor'' and inserting in lieu thereof ''person''.~~

~~(b) APPLICABILITY OF CERTIFICATION REQUIREMENT.—Subsection (e)(7)(A) of such section is amended by adding at the end the following: ''However, paragraph (1)(B) does not apply with respect to a contract for less than $500,000.''.~~

~~(c) RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection (f) of such section is amended—~~

~~(1) by redesignating paragraph (3) as paragraph (4); and~~

~~(2) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:~~

~~''(1) No individual who, in the year prior to separation from service as an officer or employee of the Govern-~~

~~ment or an officer of the uniformed services in a covered position, participated personally and substantially in acquisition functions related to a contract, subcontract, or claim of $500,000 or more and—~~

~~"(A) engaged in repeated direct contact with the contractor or subcontractor on matters relating to such contract, subcontract, or claim; or~~

~~"(B) exercised significant ongoing decisionmaking responsibility with respect to the contractor or subcontractor on matters relating to such contract, subcontract, or claim,~~

~~shall knowingly accept or continue employment with such contractor or subcontractor for a period of 1 year following the individual's separation from service, except that such individual may accept or continue employment with any division or affiliate of such contractor or subcontractor that does not produce the same or similar products as the entity involved in the negotiation or performance of the contract or subcontract or the adjustment of the claim.~~

~~"(2) No contractor or subcontractor, or any officer, employee, agent, or consultant of such contractor or subcontractor shall knowingly offer, provide, or continue any employment for another person, if such contractor, subcontractor, officer, employee, agent, or consultant knows~~

~~or should know that the acceptance of such employment is or would be in violation of paragraph (1).~~

~~"(3) The head of each Federal agency shall designate in writing as a 'covered position' under this section each of the following positions in that agency:~~

~~"(A) The position of source selection authority, member of a source selection evaluation board, or chief of a financial or technical evaluation team, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the evaluation of proposals or the selection of a source for a contract in excess of $500,000.~~

~~"(B) The position of procuring contracting officer, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the negotiation of a contract in excess of $500,000 or the negotiation or settlement of a claim in excess of $500,000.~~

~~"(C) The position of program executive officer, program manager, or deputy program manager, or any other position, if the officer or employee in that position is likely personally to exercise similar substantial responsibility for ongoing discretionary func-~~

~~tions in the management or administration of a contract in excess of $500,000.~~

~~"(D) The position of administrative contracting officer, the position of an officer or employee assigned on a permanent basis to a Government Plant Representative's Office, the position of auditor, a quality assurance position, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the on-site oversight of a contractor's operations with respect to a contract in excess of $500,000.~~

~~"(E) A position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in operational or developmental testing activities involving repeated direct contact with a contractor regarding a contract in excess of $500,000.".~~

~~(d) DISCLOSURE OF PROPRIETARY OR SOURCE SELECTION INFORMATION TO UNAUTHORIZED PERSONS.—Subsection (l) of such section is amended—~~

~~(1) by inserting "who are likely to be involved in contracts, modifications, or extensions in excess of $25,000" in the first sentence after "its procurement officials"; and~~

~~(2) by striking out ''(e)'' each place it appears and inserting in each such place ''(f)''.~~

~~(e) RULES OF CONSTRUCTION.—Subsection (n) of such section is amended to read as follows:~~

~~''(n) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—~~

~~''(1) authorize the withholding of any information from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an inspector general of a Federal agency;~~

~~''(2) restrict the disclosure of information to, or receipt of information by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;~~

~~''(3) restrict a contractor from disclosing its own proprietary information or the recipient of information so disclosed by a contractor from receiving such information; or~~

~~''(4) restrict the disclosure or receipt of information relating to a Federal agency procurement that has been canceled by the agency and that the~~

~~contracting officer concerned determines in writing is not likely to be resumed.''.~~

~~(f) TERM TO BE DEFINED IN REGULATIONS.—Subsection (o)(2)(A) of such section is amended—~~

~~(1) by inserting ''money, gratuity, or other'' before ''thing of value'';~~ ~~and~~

~~(2) by inserting before the semicolon ''and such other exceptions as may be adopted on a Governmentwide basis under section 7353 of title 5, United States Code''.~~

~~(g) TERMS DEFINED IN LAW.—Subsection (p) of such section is amended—~~

~~(1) in paragraph (1) by striking out ''clauses (i)–(viii)'' and inserting in lieu thereof ''clauses (i) through (vii)'';~~

~~(2) in paragraph (3)—~~

~~(A) in subparagraph (A)—~~

~~(i) by striking out clause (i);~~

~~(ii) by redesignating clauses (ii), (iii), (iv), (v), (vi), (vii), and (viii) as clauses (i), (ii), (iii), (iv), (v), (vi), and (vii), respectively;~~ ~~and~~

~~(iii) in clause (i) (as redesignated by subclause (II) of this clause), by striking out ''review and approval of a specifica-~~

~~tion'' and inserting in lieu thereof ''approval or issuance of a specification, acquisition plan, procurement request, or requisition'';~~ ~~and~~

~~(B) in subparagraph (B), by striking out all after ''includes'' and inserting in lieu thereof the following: ''any individual acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned, regardless of whether such individual is a consultant, expert, or advisor, or an officer or employee of a contractor or subcontractor (other than a competing contractor).'';~~ ~~and~~

~~(3) in paragraph (6)(A), by inserting ''nonpublic'' before ''information''.~~

~~SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES CODE.~~

~~Section 208(a) of title 18, United States Code, is amended—~~

~~(1) by inserting ''(1)'' before ''Except as permitted'';~~ ~~and~~

~~(2) by adding at the end the following new paragraph:~~

~~''(2) Whoever knowingly aids, abets, counsels, commands, induces, or procures conduct prohibited by this~~

~~section shall be subject to the penalties set forth in section 216 of this title.''.~~

~~SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.~~

~~(a) REPEAL.—The following provisions of law are repealed:~~

~~(1) Sections 2207, 2397, 2397a, 2397b, 2397c, and 2408 of title 10, United States Code.~~

~~(2) Section 281 of title 18, United States Code.~~

~~(3) Section 801 of title 37, United States Code.~~

~~(4) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218).~~

~~(b) CLERICAL AMENDMENTS.—~~

~~(1) TITLE 10.—Part IV of subtitle A of title 10, United States Code, is amended—~~

~~(A) in the table of sections at the beginning of chapter 131, by striking out the item relating to section 2207; and~~

~~(B) in the table of sections for chapter 141, by striking out the items relating to sections 2397, 2397a, 2397b, 2397c, and 2408.~~

~~(2) TITLE 18.—The table of sections for chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.~~

~~(3) TITLE 37.—The table of sections for chapter 15 of title 37, United States Code, is amended by striking out the item relating to section 801.~~

~~(4) DEPARTMENT OF ENERGY ORGANIZATION ACT.—The table of contents for the Department of Energy Organization Act is amended by striking out the matter relating to part A of title VI.~~

~~SEC. 6004. IMPLEMENTATION.~~

~~(a) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, regulations implementing the amendments made by this section to section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), including definitions of the terms used in subsection (f) of such section shall be issued in accordance with sections 6 and 25 of such Act (41 U.S.C. 405 and 521) after coordination with the Director of the Office of Government Ethics.~~

~~(b) SAVINGS PROVISIONS.—~~

~~(1) CONTRACTOR CERTIFICATIONS.—No officer, employee, agent, representative, or consultant of a contractor who has signed a certification under section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) before the effective date of this Act shall be required to sign a~~

~~new certification as a result of the enactment of this Act.~~

~~(2) FEDERAL PROCUREMENT OFFICIAL CERTIFICATIONS.—No procurement official of a Federal agency who has signed a certification under section 27(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(l)) before the date of enactment of this Act shall be required to sign a new certification as a result of the enactment of this Act.~~

~~(c) INSPECTOR GENERAL REPORTS.—Not later than May 31 of each of the years 1994 through 1998, the Inspector General of each Federal agency (or, in the case of a Federal agency that does not have an Inspector General, the head of such agency) shall submit to Congress a report on the compliance by the agency during the preceding year with the requirement for the head of the agency to designate covered procurement positions under section 27(f)(3) of the Office of Federal Procurement Policy Act (as added by section 6001(c)).~~

~~Subtitle B—Additional Amendments~~

~~SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL.~~

~~(a) AMENDMENT OF OFPP ACT.—The Office of Federal Procurement Policy Act, as amended by section 1091,~~

~~is further amended by inserting after section 22 the following new section 23:~~

~~"CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL~~

~~"SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—(1) No person who is not an employee may be paid by an agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless employees with adequate training and capabilities to perform such evaluations and analyses are not readily available within the agency or any other Federal agency.~~

~~"(2) In the administration of this subsection, the head of each agency shall determine the standards of adequate training and capability of employees to conduct such acquisitions.~~

~~"(b) DELEGATION OF PROCUREMENT AUTHORITY.—With respect to an acquisition that is subject to section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), the Administrator of General Services may not issue a delegation of procurement authority for the acquisition unless the request for the delegation of procurement authority includes a determination of the contracting agency that—~~

~~"(1) such agency has and will utilize employees within the agency, or employees available from an-~~

other agency, who are adequately trained and capable of conducting evaluations and analyses of proposals submitted for such an acquisition; or

''(2)(A) such agency does not have employees within the agency who are adequately trained and capable of conducting evaluations and analyses of proposals submitted for such an acquisition; and

''(B) adequately trained and capable employees are not readily available from other agencies in accordance with regulations promulgated by the Federal Acquisition Regulatory Council.

''(c) DEFINITION.—For purposes of this section, the term 'employee' has the meaning given such term in section 2105 of title 5, United States Code.''.

(b) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—

(1) GUIDANCE AND REGULATIONS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—

(A) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

~~(B) provide guidance and promulgate regulations regarding—~~

~~(i) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and~~

~~(ii) the manner in which Federal employees with expertise may be shared with agencies needing expertise for such acquisitions.~~

~~(2) DEFINITION.—In paragraph (1), the term ''employee'' has the meaning given such term in section 2105 of title 5, United States Code.~~

~~SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR STUDY AND REPORT.~~

~~Section 17 of the Office of Federal Procurement Policy Act (41 U.S.C. 415) is repealed.~~

~~SEC. 6053. WAITING PERIOD FOR SIGNIFICANT CHANGES PROPOSED FOR ACQUISITION REGULATIONS.~~

~~Section 22(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) is amended—~~

~~(1) by striking out ''30 days'' and inserting in lieu thereof ''60 days''; and~~

~~(2) by adding at the end the following: ''Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date.''.~~

~~TITLE VII—DEFENSE TRADE AND COOPERATION~~

~~SEC. 7001. PURCHASES OF FOREIGN GOODS.~~

~~(a) REPEAL OF EXECUTED REQUIREMENTS.—~~

~~(1) BUY AMERICAN PROVISIONS.—~~

~~(A) REQUIREMENT FOR POLICY GUIDANCE.—Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the ''Buy American Act'', is amended in section 4(g) (41 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C) and (3).~~

~~(B) REPORTING REQUIREMENT.—Section 9096(b) of Public Law 102–396 (106 Stat. 1924; 41 U.S.C. 10b–2(b)) is repealed.~~

~~(2) STUDIES OF BUY AMERICAN ACT WAIVERS.—Section 306 of the Trade Agreements Act of 1970 (19 U.S.C. 2516), relating to studies of certain~~

~~employment effects and procurement effects of a waiver of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the ''Buy American Act'', is repealed.~~

~~(b) REPEAL OF REDUNDANT PROVISION.—Section 2327 of title 10, United States Code, is repealed.~~

~~SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.~~

~~(a) DEFENSE INTERNATIONAL AGREEMENTS.—~~

~~(1) TERMINOLOGY REVISIONS.—Section 2531 of title 10, United States Code, is amended—~~

~~(A) in the subsection captions for subsections (a) and (c), by striking out ''MOUs AND RELATED'' and inserting in lieu thereof ''INTERNATIONAL'';~~

~~(B) in subsection (a), by striking out ''proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding,'' in the matter above paragraph (1) and inserting in lieu thereof ''proposed international agreement, including a memorandum of understanding,'';~~

~~(C) by striking out ''memorandum of understanding or related agreement'' each place it appears and inserting in lieu thereof ''international agreement'';~~

~~(D) in subsection (b), by striking out ''memorandum or related agreement'' each place it appears in the second sentence and inserting in lieu thereof ''international agreement''; and~~

~~(E) in subsection (c)—~~

~~(i) by striking out ''A'' after ''AGREEMENTS.—'' and inserting in lieu thereof ''An''; and~~

~~(ii) by striking out ''memorandum or agreement'' and inserting in lieu thereof ''international agreement''.~~

~~(2) EXPANDED SCOPE OF AGREEMENTS.—Section 2531(a) of title 10, United States Code, is amended by striking out ''research, development, or production'' in the matter above paragraph (1) and inserting in lieu thereof ''research, development, production, or logistics support''.~~

~~(3) CLERICAL AMENDMENTS.—~~

~~(A) SECTION HEADING.—The heading of section 2531 of title 10, United States Code, is amended to read as follows:~~

~~**''§ 2531. Defense international agreements''.**~~

~~(B) TABLE OF SECTIONS.—The item relating to such section in the table of sections at~~

the beginning of subchapter V of chapter 148 of such title is amended to read as follows:

"2531. Defense international agreements.".

(b) REPEAL OF UNNECESSARY AUTHORITY.—

(1) REPEAL.—Section 7344 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 635 of such title is amended by striking out the item relating to section 7344.

SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS, AND STANDARDIZATION.

(a) LIMITED WAIVER OF RESTRICTIONS ON ACCRUED REIMBURSABLE LIABILITIES AND CREDITS FOR CONTINGENCY OPERATIONS.—Section 2347 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) The Secretary of Defense may waive the restrictions in subsections (a) and (b) for a period not to exceed 180 days upon a written determination that the armed forces are involved in a contingency operation or that involvement of the armed forces in a contingency operation is imminent. Upon making such a determination, the Secretary shall transmit a copy of the determination to the Committees on Armed Services of the Senate and House of Representatives.".

~~(b) COMMUNICATIONS SUPPORT.—Section 2350f of title 10, United States Code, is amended—~~

~~(1) by redesignating subsection (d) as subsection (e); and~~

~~(2) by inserting after subsection (c) the following new subsection:~~

~~''(d)(1) Nothing in this section shall be construed to limit the authority of the Secretary of Defense, without a formal bilateral agreement or multilateral arrangement, to furnish communications support and related supplies to, or receive communications support and related supplies from, an allied country in accordance with this subsection.~~

~~''(2) The Secretary of Defense may furnish or receive such support and supplies on a reciprocal basis for a period not to exceed 90 days—~~

~~''(A) in order to meet emerging operational requirements of the United States and the allied country; or~~

~~''(B) incident to a joint military exercise with the allied country.~~

~~''(3) If interconnection of communication circuits is maintained for joint or multilateral defense purposes under the authority of this subsection, the costs of maintaining such circuits may be allocated among the various users.''.~~

~~TITLE VIII—COMMERCIAL ITEMS~~

~~SEC. 8001. DEFINITIONS.~~

~~Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), as amended by section 4001(a), is further amended—~~

~~(1) by striking out ''Act—''and inserting in lieu thereof ''Act:'';~~

~~(2) by capitalizing the initial letter in the first word of each paragraph;~~

~~(3) by striking out the semicolon at the end of each of paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) and inserting in lieu thereof a period;~~

~~(4) in paragraphs (4) and (10), by striking out ''; and'' at the end and inserting in lieu thereof a period; and~~

~~(5) by adding at the end the following new paragraphs:~~

~~''(12) The term 'commercial item' means—~~

~~''(A) property, other than real property, that is of a type regularly used by the general public or by nongovernmental entities in the course of normal business operations for purposes other than governmental purposes and—~~

~~''(i) has been sold or licensed to the general public;~~

~~"(ii) has not been sold or licensed to the general public but has been offered for sale or license to the general public; or~~

~~"(iii) is not yet available in the commercial marketplace but will be made available for commercial delivery within a reasonable period;~~

~~"(B) any item that, but for minor modifications made to meet Federal Government requirements or modifications of a type customarily available in the commercial marketplace, would satisfy the criteria in subparagraph (A);~~

~~"(C) any combination of items meeting the requirements of subparagraph (A) or (B) that are of a type customarily combined and sold in combination to the general public; and~~

~~"(D) installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (A), (B), or (C) and if the source of such services—~~

~~"(i) offers such services to the general public and the Federal Government con-~~

~~temporaneously and under similar terms and conditions; and~~

~~''(ii) offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.~~

~~''(13) The term 'nondevelopmental item' means—~~

~~''(A) any commercial item;~~

~~''(B) any previously developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;~~

~~''(C) any item of supply described in subparagraph (A) or (B) that requires only minor modification of the type normally available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or~~

~~''(D) any item of supply currently being produced that does not meet the requirements of subparagraph (A), (B), or (C) solely because the item—~~

~~''(i) is not yet in use; or~~

~~''(ii) is not yet available in the commercial marketplace.~~

~~''(14) The term 'component' means any item supplied to the Federal Government as part of an end item or of another component.~~

~~''(15) The term 'commercial component' means any component that is a commercial item.''.~~

~~**SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS.**~~

~~(a) PREFERENCE REQUIRED.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4021, is further amended by adding at the end the following new section:~~

~~''PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS~~

~~''SEC. 31. (a) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—~~

~~''(1) requirements of the executive agency with respect to a procurement of supplies are stated in terms of—~~

~~''(A) functions to be performed;~~

~~''(B) performance required; or~~

~~''(C) essential physical characteristics;~~

~~"(2) such requirements are defined so that commercial items or other nondevelopmental items may be procured to fulfill such requirements; and~~

~~"(3) such requirements are fulfilled through the procurement of commercial items or other nondevelopmental items.~~

~~"(b) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—~~

~~"(1) acquire commercial items or other nondevelopmental items to meet the needs of the executive agency;~~

~~"(2) require prime contractors and subcontractors at all levels under the executive agency contracts to incorporate commercial items or other nondevelopmental items as components of items supplied to the executive agency;~~

~~"(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or other nondevelopmental items;~~

~~"(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or other nondevelopmental items in response to the executive agency solicitations;~~

~~"(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items and other nondevelopmental items; and~~

~~"(6) require training of appropriate personnel in the acquisition of commercial items and other nondevelopmental items.~~

~~"(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an executive agency shall conduct market research appropriate to the circumstances—~~

~~"(A) before developing new specifications for a procurement by that executive agency; and~~

~~"(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.~~

~~"(2) The head of an executive agency shall use the results of market research to determine whether there are commercial items or other nondevelopmental items available that—~~

~~"(A) meet the executive agency's requirements;~~

~~"(B) could be modified to meet the executive agency's requirements; or~~

~~''(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.''.~~

~~(b) REPEAL OF SUPERSEDED PROVISION.—~~

~~(1) SEPARATE STATEMENT OF PREFERENCE FOR DEPARTMENT OF DEFENSE.—Section 2325 of title 10, United States Code, is repealed.~~

~~(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2325.~~

~~SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.~~

~~(a) REQUIRED FAR PROVISIONS.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8002, is further amended by adding at the end the following:~~

~~''FEDERAL ACQUISITION REGULATION PROVISIONS REGARDING ACQUISITIONS OF COMMERCIAL ITEMS AND COMPONENTS~~

~~''SEC. 32. (a) CONTRACT CLAUSES AND OTHER CLAUSES.—(1)(A) The Federal Acquisition Regulation shall include one or more sets of contract clauses containing the terms and conditions for the acquisition of commercial items and commercial components by executive agencies and by contractors in the performance of contracts of executive agencies.~~

~~"(B) The contract clauses referred to in subparagraph (A) shall include only—~~

~~"(i) those clauses that are required to implement provisions of law applicable to acquisitions of commercial items or commercial components, as the case may be;~~

~~"(ii) those contract clauses that are essential for the protection of the Federal Government's interest in an acquisition of commercial items or commercial components, as the case may be; and~~

~~"(iii) those contract clauses that are determined to be consistent with standard commercial practice and appropriate to be included in a contract or subcontract for commercial items or commercial components, as the case may be.~~

~~"(2) Subject to paragraph (3), the Federal Acquisition Regulation shall require that, to the maximum extent practicable, only the contract clauses referred to in paragraph (1) be used in a contract or subcontract for the acquisition of commercial items or commercial components by or for an executive agency.~~

~~"(3) The Federal Acquisition Regulation shall provide that a contract or subcontract referred to in paragraph (2) may contain contract clauses other than the contract clauses referred to in that paragraph only if the~~

other clauses are essential for the protection of the Federal Government's interest in—

"(A) that contract or subcontract, as determined in writing by the contracting officer for such contract; or

"(B) a class of contracts or subcontracts, as determined by the head of an agency concerned, unless the determination of that head of an agency is disapproved by the Administrator.

"(4) The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to paragraph (1), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

"(b) MARKET ACCEPTANCE.—The Federal Acquisition Regulation shall include a requirement for the head of an executive agency, when determined appropriate in accordance with criteria set out in the regulation, to require offerors for a contract to demonstrate in the offer that the items offered—

"(1) have either—

"(A) achieved a level of commercial market acceptance necessary to indicate that the items are suitable for the executive agency's use; or

~~"(B) been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and~~

~~"(2) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.~~

~~"(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The Federal Acquisition Regulation shall include a requirement that firm, fixed price contracts be used, to the maximum extent practicable, for the acquisition of commercial items.~~

~~"(d) CONTRACT QUALITY REQUIREMENTS.—The Federal Acquisition Regulation shall include provisions that—~~

~~"(1) permit, to the maximum extent practicable, a contractor under a commercial items acquisition to use the contractor's existing quality assurance system as a substitute for compliance with a requirement for the Federal Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Federal Government;~~

~~"(2) require that, to the maximum extent practicable, an executive agency take advantage of warranties (including extended warranties) offered by~~

~~offerors of commercial items and use such warranties for the repair and replacement of commercial items; and~~

~~''(3) set forth guidance to executive agencies regarding the use of past performance of items and sources as a factor in contract award decisions.''.~~

~~(b) DEFENSE CONTRACT CLAUSES.—~~

~~(1) REPEAL OF DOD AUTHORITY.—Section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note) is repealed.~~

~~(2) SAVINGS PROVISION.—Notwithstanding section 32(a) of the Office of Federal Procurement Policy Act (as added by subsection (a)), contracts of the Department of Defense entered into before October 1, 1994, and subcontracts entered into before such date under such contracts, may include clauses developed pursuant to paragraphs (2) and (3) of section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note).~~

~~SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS.~~

~~The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8003, is further amended by adding at the end the following:~~

~~''CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO ACQUISITIONS OF COMMERCIAL ITEMS~~

~~''SEC. 33. (a) IN GENERAL.—(1) The applicability of a provision of law described in paragraph (2) to contracts for the acquisition of commercial items may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.~~

~~''(2) A provision of law referred to in paragraph (1) is any provision of law enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1993 that, as determined by the Administrator for Federal Procurement Policy, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government.~~

~~''(b) WAIVER OF APPLICABILITY TO SUBCONTRACTS.—The applicability of a provision of law described in subsection (a)(2) to subcontracts under a contract for the acquisition of commercial items may be waived on a class basis in the Federal Acquisition Regula-~~

~~tion. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.''.~~

~~SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF LAW.~~

~~(a) ARMED SERVICES ACQUISITIONS.—~~

~~(1) PROHIBITION ON CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, as amended by section 4031, is further amended by inserting before the period at the end of the sentence added by section 4031 the following: ''or to a contract for the acquisition of commercial items''.~~

~~(2) REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Paragraph (2) of section 2384(b) of title 10, United States Code, is amended to read as follows:~~

~~''(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items, as defined in section 2302 of this title.''.~~

~~(3) PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, as amended by section 4034, is further amended by adding at the end the following: ''The requirement~~

shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''.

(4) PROHIBITION ON LIMITATION OF SUBCONTRACTOR DIRECT SALES.—Section 2402 of title 10, United States Code, as amended by section 4032, is further amended by adding at the end the following new subsection:

''(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

(5) PREFERENCE FOR USE OF UNITED STATES VESSELS FOR TRANSPORTING SUPPLIES OF THE ARMED FORCES.—Section 2631 of title 10, United States Code, as amended by section 4036, is further amended by inserting before the period at the end of the sentence added by section 4036 the following: ''or to a contract for the transportation of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))).''.

(b) CIVILIAN AGENCY ACQUISITIONS.—

(1) RESTRICTIONS ON SUBCONTRACTOR SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g), as amended by section 4042, is further amended by adding at the end the following new subsection:

''(d) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restric-

~~tion than any other prospective purchaser of such commercial items from that subcontractor.''.~~

~~(2) PROHIBITION ON CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)), as amended by section 4041, is further amended by inserting before the period at the end of the sentence added by section 4041 the following: ''or to a contract for the acquisition of commercial items''.~~

~~(c) ACQUISITIONS GENERALLY.—~~

~~(1) FEDERAL WATER POLLUTION CONTROL ACT.—Section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1368) is amended by adding at the end the following new subsection:~~

~~''(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.~~

~~''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.~~

(2) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—The Contract Work Hours and Safety Standards Act (title I of the Work Hours and Safety Act of 1962 (40 U.S.C. 327 et seq.)) is amended by adding at the end the following new section:

''SEC. 108. (a) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement in this title.

''(b) In subsection (a), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT REQUIREMENT RELATING TO PROCUREMENT INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by adding at the end the following new subparagraph:

''(C) This subsection does not apply to a contract for the acquisition of commercial items.''.

(4) CERTAIN PROVISIONS OF THE ANTI-KICKBACK ACT OF 1986.—

~~(A) REQUIREMENT FOR CONTRACT CLAUSE.—Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57), as amended by section 4052, is further amended by inserting before the period at the end of subsection (d) the following: ''or to a prime contract for the acquisition of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))).''.~~

~~(B) INSPECTION AUTHORITY.—Section 8 of such Act (41 U.S.C. 58) is amended by adding at the end the following: ''This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''.~~

~~(5) DRUG-FREE WORKPLACE ACT OF 1988.—The Drug-Free Workplace Act of 1988 (subtitle D of title V of Public Law 100–690; 41 U.S.C. 701 et seq.), as amended by section 4057, is further amended by inserting after the matter inserted by such section 4057 the following: '', other than a contract for the procurement of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))),''.~~

~~(6) CLEAN AIR ACT.—Section 306 of the Clean Air Act (42 U.S.C. 7606) is amended by adding at the end the following new subsection:~~

~~''(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.~~

~~''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.~~

~~(7) MERCHANT MARINE ACT, 1936.—Section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1241(b)), as amended by section 4058, is further amended by adding at the end the following new paragraph:~~

~~''(4)(A) Paragraph (1) does not apply to a contract for transportation of commercial items on ocean vessels.~~

~~''(B) In subparagraph (A), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.~~

~~(8) FLY AMERICAN REQUIREMENTS.—Section 1117 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1517) is amended by adding at the end the following new subsection:~~

~~''(e)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.~~

~~''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.~~

~~SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OFFERS OF COMMERCIAL ITEMS.~~

~~Section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) is amended by adding at the end the following new paragraph:~~

~~''(4) The requirements of paragraph (3)(B) do not apply to contracts for the purchase of commercial items. The Administrator shall prescribe for such contracts appropriate limits on the applicability of a deadline for submission of bids or proposals that is required by subsection (a)(1). Such limits shall be incorporated in the Federal Acquisition Regulation.''.~~

~~SEC. 8007. ADVOCATE FOR ACQUISITION OF COMMERCIAL AND NONDEVELOPMENTAL ITEMS.~~

~~(a) ESTABLISHMENT.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8004, is further amended by adding at the end the following:~~

~~''ADVOCATE FOR ACQUISITION OF COMMERCIAL AND NONDEVELOPMENTAL ITEMS~~

~~''SEC. 34. (a) ESTABLISHMENT.—There is established in the Office of Federal Procurement Policy the position of Advocate for Acquisition of Commercial and Nondevelopmental Items.~~

~~''(b) FUNCTIONS.—The Advocate for Acquisition of Commercial and Nondevelopmental Items shall—~~

~~''(1) monitor compliance by executive agencies with the preference for the acquisition of commercial and nondevelopmental items that is set forth in section 29;~~

~~''(2) make recommendations and proposals to the Administrator regarding the reform of procurement statutes and regulations to implement that preference; and~~

~~''(3) report to the Administrator on the prospective effect of proposed legislation and regulations on the acquisition of commercial items and nondevelopmental items.~~

1 ~~''(c) REPORT.—The Administrator shall submit to~~
2 ~~the Committee on Governmental Affairs of the Senate and~~
3 ~~the Committee on Government Operations of the House~~
4 ~~of Representatives an annual report describing for the~~
5 ~~year covered by the report all actions taken by the Office~~
6 ~~of Federal Procurement Policy to promote the acquisition~~
7 ~~of commercial items and other nondevelopmental items.''.~~
8 ~~(b) RESPONSIBILITIES OF THE ADVOCATE FOR COM-~~
9 ~~PETITION.—Section 20(c) of such Act (41 U.S.C. 418(c))~~
10 ~~is amended to read as follows:~~
11 ~~''(c) The advocate for competition for each procuring~~
12 ~~activity shall be responsible for promoting full and open~~
13 ~~competition, promoting the acquisition of commercial~~
14 ~~items and other nondevelopmental items, and challenging~~
15 ~~barriers to such acquisition, including such barriers as un-~~
16 ~~necessarily restrictive statements of need, unnecessarily~~
17 ~~detailed specifications, and unnecessarily burdensome con-~~
18 ~~tract clauses.''.~~
19 ~~(c) REPEAL OF SUPERSEDED PROVISION.—Section~~
20 ~~28 of such Act (41 U.S.C. 424) is repealed.~~
21 ~~**SEC. 8008. PROVISIONS NOT AFFECTED.**~~
22 ~~Nothing in this title shall be construed as amending,~~
23 ~~modifying, or superseding, or as intended to impair or re-~~
24 ~~strict authorities or responsibilities under—~~

~~(1) section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), popularly referred to as the ''Brooks Automatic Data Processing Act'';~~

~~(2) title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.), popularly referred to as the ''Brooks Architect-Engineers Act'';~~

~~(3) section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or any other provision of that Act; or~~

~~(4) the Act of June 25, 1938 (41 U.S.C. 46–48c), that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), popularly referred to as the ''Javits-Wagner-O'Day Act''.~~

~~SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL GOVERNMENT USE OF MARKET RESEARCH.~~

~~(a) REPORT REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the use of market research by the Federal Government in support of the procurement of commercial items and nondevelopmental items.~~

~~(b) CONTENT OF REPORT.—The report shall include the following:~~

~~(1) A review of existing Federal Government market research efforts to gather data concerning commercial and other nondevelopmental items.~~

~~(2) A review of the feasibility of creating a Government-wide data base for storing, retrieving, and analyzing market data, including use of existing Federal Government resources.~~

~~(3) Any recommendations for changes in law or regulations that the Comptroller General considers appropriate.~~

~~TITLE IX—EFFECTIVE DATE~~

~~SEC. 9001. EFFECTIVE DATE.~~

~~Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.~~

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Acquisition Streamlining Act of 1994''.

SEC. 2. TABLE OF CONTENTS.

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SUBPART A—COMPETITION REQUIREMENTS

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Sec. 1002. Establishment or maintenance of alternative sources of supply.
Sec. 1003. Clarification of approval authority for use of procedures other than full and open competition.

Sec. 1004. Task order contracts for advisory and assistance services.
Sec. 1005. Acquisition of expert services.

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

Sec. 1011. Source selection factors.
Sec. 1012. Solicitation provision regarding evaluation of purchase options.
Sec. 1013. Prompt notice of award.
Sec. 1014. Post-award debriefings.
Sec. 1015. Protest file.
Sec. 1016. Award of costs and fees in agency settlement of protests.
Sec. 1017. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.
Sec. 1022. Technical and conforming amendments.

SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

Sec. 1031. Repeal of requirement for annual report by advocates for competition.

PART II—CIVILIAN AGENCY ACQUISITIONS

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Sec. 1051. References to Federal Acquisition Regulation.
Sec. 1052. Establishment or maintenance of alternative sources of supply.
Sec. 1053. Clarification of approval authority for use of procedures other than full and open competition.
Sec. 1054. Task order contracts for advisory and assistance services.
Sec. 1055. Acquisition of expert services.
Sec. 1056. Continued occupancy of leased space.

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Sec. 1061. Solicitation, evaluation, and award.
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Sec. 1065. Protest file.
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SUBPART C—KINDS OF CONTRACTS

Sec. 1071. Agency head determination regarding use of cost type or incentive contract.
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PART III—ACQUISITIONS GENERALLY

Sec. 1091. Policy regarding consideration of contractor past performance.
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PART I—ARMED SERVICES ACQUISITIONS

Sec. 1201. Stabilization of dollar threshold of applicability.
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Sec. 1204. Additional special rules for commercial items.
Sec. 1205. Right of United States to examine contractor records.
Sec. 1206. Required regulations.
Sec. 1207. Consistency of time references.
Sec. 1208. Exception for transfers between divisions, subsidiaries, and affiliates.
Sec. 1209. Repeal of superseded provision.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.
Sec. 1252. Repeal of obsolete provision.

Subtitle C—Research and Development

Sec. 1301. Research projects.
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Subtitle D—Procurement Protests

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Subtitle B—Cost Principles

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Sec. 2101. Allowable contract costs.
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Sec. 2191. Travel expenses of government contractors.

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Sec. 2201. Consolidation and revision of authority to examine records of contractors.

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Sec. 2251. Authority to examine records of contractors.

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Subtitle G—Miscellaneous

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Sec. 3082. Repeal of requirements regarding product evaluation activities.
Sec. 3083. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.
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TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—ARMED SERVICES ACQUISITIONS

Subpart A—Competition Requirements

SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGULATION.

Section 2304 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by striking out ''modifications'' and all that follows through ''note)'' and inserting in lieu thereof ''Federal Acquisition Regulation''; and

(2) in subsection (g)(1), by striking out ''regulations modified'' and all that follows through ''note)'' and inserting in lieu thereof ''Federal Acquisition Regulation''.

SEC. 1002. ESTABLISHMENT OR MAINTENANCE OF ALTERNATIVE SOURCES OF SUPPLY.

Section 2304(b) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking out ''or'' at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(D) would ensure the continuous availability of a reliable source of supply of such property or service;

''(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

''(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.'';

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following new paragraph (2):

''(2) The determination required of the agency head in paragraph (1) may not be made for a class of purchases or contracts.''; and

(4) in paragraph (4), as redesignated by paragraph (2), by striking out ''paragraphs (1) and (2)'' and inserting in lieu thereof ''paragraphs (1) and (3)''.

SEC. 1003. CLARIFICATION OF APPROVAL AUTHORITY FOR USE OF PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.

Section 2304(f)(1)(B)(i) of title 10, United States Code, is amended by inserting before the semicolon at the end the following: ''or by an official referred to in clause (ii), (iii), or (iv)''.

SEC. 1004. TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.

(a) AUTHORITY.—

(1) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2304 the following new section:

"§ 2304a. Task order contracts for advisory and assistance services

"(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, the head of an agency may enter into a contract for advisory and assistance services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of task orders during the specified period of the contract.

"(2) Except as provided in subsection (h), the head of an agency may enter into a contract described in paragraph (1) only under the authority of this section.

"(b) LIMITATION ON CONTRACT PERIOD.—The period of a contract referred to in subsection (a), including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to such contract.

"(c) CONTRACT PROCEDURES.—(1) The head of an agency may use procedures other than competitive procedures to enter into a contract referred to in subsection (a) only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

"(2) The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

"(3) The solicitation shall include the following:

"(A) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

"(B) The maximum quantity or dollar value of services to be procured under the contract.

"(C) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services to be procured under the contract.

"(4)(A) The head of an agency may, on the basis of one solicitation, award separate contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

"(B) If, in the case of a contract for advisory and assistance services to be entered into under the authority of this section, the contract period is to exceed 3 years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

"(i) provide for a multiple award authorized under subparagraph (A); and

"(ii) include a statement that the head of the agency may also elect to award only one contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

"(C) Subparagraph (B) does not apply in the case of a solicitation for which the head of an agency determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

"(5) A contract referred to in subsection (a) shall contain the same information that is required by paragraph (3) to be included in the solicitation of offers for that contract.

"(d) ORDER PROCEDURES.—(1) The following actions are not required for a task order issued under a contract entered into in accordance with this section:

"(A) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(B) Except as provided in paragraph (2), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

"(2)(A) When multiple contracts are awarded pursuant to subsection (c)(4), all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task order in excess of $2,500 that is to be issued under any of the contracts unless—

"(i) the agency's need for the services ordered is of such unusual urgency that competition would result in unacceptable delays in fulfilling the agency's needs;

"(ii) only one such contractor is capable of providing the services required at the level of quality required because the services ordered are unique or so highly specialized;

"(iii) the task order should be issued on a sole-source basis in the interest of economy and efficiency

because it is a logical follow-on to a task order already issued on a competitive basis; or

"(iv) the order must be placed with a particular contractor in order to satisfy a minimum guarantee.

"(B) When a task order is issued in accordance with subparagraph (A), the order shall include a statement of work that clearly specifies all tasks to be performed under the order.

"(3) A protest is not authorized in connection with the issuance or proposed issuance of a task order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT.—(1) A task order may not increase the scope, period, or maximum value of the contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(4)(A) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (c), a contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the agency head determines that—

"(i) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

"(ii) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

"(B) A contract may be extended under the authority of subparagraph (A) only once and only in accordance with the limitations and requirements of this subsection.

"(f) TASK ORDER OMBUDSMAN.—Each head of an agency who awards multiple contracts pursuant to subsection (c)(4) shall appoint or designate a task order ombudsman who shall be responsible for reviewing complaints

from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task orders when required under subsection (d)(2). The task order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

"(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

"(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit the authority of the head of an agency to enter into single or multiple task order contracts, or single or multiple delivery order contracts, for property or services (other than advisory and assistance services) under other provisions of this chapter or under any other provision of law.

"(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term 'advisory and assistance services' has the meaning given such term in section 1105(g) of title 31.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2304 the following new item:

''2304a. Task order contracts for advisory and assistance services.''.

(b) REPEAL OF SUPERSEDED PROVISION.—Section 2304 of title 10, United States Code, is amended by striking out subsection (j).

(c) CONFORMING AMENDMENT FOR PROFESSIONAL AND TECHNICAL SERVICES.—Section 2331 of title 10, United States Code, is amended by striking out subsection (c).

SEC. 1005. ACQUISITION OF EXPERT SERVICES.

Section 2304(c)(3) of title 10, United States Code, is amended—

(1) by striking out ''or (B)'' and inserting in lieu thereof ''(B)''; and

(2) by inserting before the semicolon at the end the following: '', or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify''.

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1011. SOURCE SELECTION FACTORS.

Section 2305(a) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(i), by striking out ''nonprice-related factors)'' and inserting in lieu thereof ''nonprice-related factors and subfactors)''; and

(B) in subparagraph (B)(ii), by striking out subclause (I) and inserting in lieu thereof the following:

''(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and''; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

"(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

"(ii) shall include cost or price to the Government as an evaluation factor that must be considered in the evaluation of proposals; and

"(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

"(I) significantly more important than cost or price;

"(II) approximately equal in importance to cost or price; or

"(III) significantly less important than cost or price.

"(B) Nothing in this paragraph prohibits an agency from—

''(i) providing additional information in a solicitation, including numeric weights for all evaluation factors; or

''(ii) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.''.

SEC. 1012. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.

(a) OPTIONS FOR ADDITIONAL PURCHASES.—Subsection (a) of section 2305 of title 10, United States Code, as amended by section 1011, is further amended by adding at the end the following new paragraph:

''(4) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.''.

(b) REPEAL OF SUPERSEDED PROVISION.—Section 2301(a) of such title is amended—

(1) by striking out paragraph (7);

(2) by inserting ''and'' at the end of paragraph (5); and

(3) by striking out ''; and'' at the end of paragraph (6) and inserting in lieu thereof a period.

SEC. 1013. PROMPT NOTICE OF AWARD.

(a) SEALED BID PROCEDURES.—Section 2305(b)(3) of title 10, United States Code, is amended by adding at the end the following: ''As soon as practicable after the date of contract award, the head of the agency shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify all offerors not awarded the contract that the contract has been awarded.''.

(b) COMPETITIVE PROPOSALS PROCEDURES.—Section 2305(b)(4)(B) of title 10, United States Code, is amended in the second sentence by striking out ''source and shall promptly notify'' and inserting in lieu thereof ''source. As soon as practicable after the date of contract award, the head of the agency shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify''.

SEC. 1014. POST-AWARD DEBRIEFINGS.

Section 2305(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph (5):

"(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An employee of the agency shall debrief the offeror promptly after receipt of the request by the agency.

"(B) The debriefing shall include, at a minimum—

"(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

"(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

"(iii) the overall ranking of all offers;

"(iv) a summary of the rationale for the award;

"(v) in the case of a proposal that incorporates equipment that is a commercial item, the make and model of the item incorporated in the offer of the contractor awarded the contract; and

"(vi) reasonable responses to questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable reg-

ulations, and other applicable authorities were followed by the agency.

"(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552 of title 5, including information relating to—

"(i) trade secrets;

"(ii) privileged or confidential manufacturing processes and techniques; and

"(iii) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

"(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

"(E) If, within one year after the date of the contract award and as a result of a successful procurement protest or otherwise, the agency seeks to fulfill the requirement under the contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

''(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

''(ii) the comparable debriefing information that was prepared with respect to the original offerors.

''(F) The contracting officer shall include a summary of the debriefing in the contract file.''.

SEC. 1015. PROTEST FILE.

Section 2305 of title 10, United States Code, is amended by adding at the end the following:

''(e)(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

''(2) Information exempt from disclosure under the section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

''(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called

'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).''.

SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLEMENT OF PROTESTS.

Section 2305 of title 10, United States Code, as amended by section 1015, is further amended by adding at the end the following new subsection:

''(f) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may take—

''(1) any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

''(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.''.

SEC. 1017. TWO-PHASE SELECTION PROCEDURES.

(a) PROCEDURES AUTHORIZED.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2305 the following new section:

''§ 2305a. Two-phase selection procedures

''(a) PROCEDURES AUTHORIZED.—The head of an agency may use two-phase selection procedures for entering

into a contract for the acquisition of property or services when the head of the agency determines that three or more offers will be received for such contract, substantial design work must be performed before an offeror can develop a price or cost proposal for such contract, and the offerors will incur a substantial amount of expenses in preparing the offers.

''(b) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

''(1) The head of the agency solicits proposals that—

''(A) include information on the offerors'—

''(i) technical approach; and

''(ii) technical qualifications; and

''(B) do not include—

''(i) detailed design information; or

''(ii) cost or price information.

''(2) The head of the agency evaluates the proposals on the basis of evaluation criteria set forth in the solicitation, except that the head of the agency does not consider cost-related or price-related evaluation factors.

''(3) The head of the agency selects at least three offerors as the most highly qualified to provide the property or services under the contract and requests

the selected offerors to submit competitive proposals that include cost or price information.

"(4) The head of the agency awards the contract in accordance with section 2305(b)(4) of this title.

"(c) RESOURCE COMPARISON CRITERION REQUIRED.—In using two-phase selection procedures for entering into a contract, the head of the agency shall establish a resource criterion or a financial criterion applicable to the contract in order to provide a consistent basis for comparing the offerors and their proposals.

"(d) TWO-PHASE SELECTION PROCEDURES DEFINED.—In this section, the term 'two-phase selection procedures' means procedures described in subsection (b) that are used for the selection of a contractor on the basis of cost or price and other evaluation criteria to provide property or services in accordance with the provisions of a contract which requires the contractor to design the property to be acquired under the contract and produce or construct such property.

"(e) APPLICABILITY ONLY TO DEPARTMENT OF DEFENSE.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2305 the following:

"2305a. Two-phase selection procedures.".

Subpart C—Kinds of Contracts

SEC. 1021. SECRETARIAL DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Subsection (c) of section 2306 of title 10, United States Code, is repealed.

SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REPEAL OF UNNECESSARY CROSS REFERENCE.—Subsection (f) of section 2306 of title 10, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—Such section is amended by redesignating subsections (d), (e), (g), and (h) as subsections (c), (d), (e), and (f), respectively.

(c) NEUTERIZATION OF REFERENCE.—Subsection (e)(1) of such section, as redesignated by subsection (b), is amended in the matter above clause (i) by striking out ''whenever he finds'' and inserting in lieu thereof ''whenever the head of the agency finds''.

Subpart D—Miscellaneous Provisions for the Encouragement of Competition

SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL REPORT BY ADVOCATES FOR COMPETITION.

Subsection (c) of section 2318 of title 10, United States Code, is repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

Subpart A—Competition Requirements

SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGULATION.

Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(1) in subsection (a)(1)(A), by striking out ''modifications'' and all that follows through ''of 1984'' and inserting in lieu thereof ''Federal Acquisition Regulation''; and

(2) in subsection (g)(1), by striking out ''regulations modified'' and all that follows through ''of 1984,'' and inserting in lieu thereof ''Federal Acquisition Regulation''.

SEC. 1052. ESTABLISHMENT OR MAINTENANCE OF ALTERNATIVE SOURCES OF SUPPLY.

Section 303(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)) is amended—

(1) in paragraph (1)—

(A) by striking out ''or'' at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(D) would ensure the continuous availability of a reliable source of supply of such property or service;

''(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

''(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.'';

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following new paragraph (2):

''(2) The determination required of the agency head in paragraph (1) may not be made for a class of purchases or contracts.''; and

(4) in paragraph (4), as redesignated by paragraph (2), by striking out ''paragraphs (1) and (2)'' and inserting in lieu thereof ''paragraphs (1) and (3)''.

SEC. 1053. CLARIFICATION OF APPROVAL AUTHORITY FOR USE OF PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.

Section 303(f)(1)(B)(i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(i)) is amended by inserting before the semicolon at the end the following: ''or by an official referred to in clause (ii), (iii), or (iv)''.

SEC. 1054. TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303G the following new section:

''TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES

''SEC. 303H. (a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, the head of an executive agency may enter into a contract for advisory and assistance services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of task orders during the specified period of the contract.

''(2) Except as provided in subsection (h), the agency head may enter into a contract described in paragraph (1) only under the authority of this section.

"(b) LIMITATION ON CONTRACT PERIOD.—The period of a contract referred to in subsection (a), including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to such contract.

"(c) CONTRACT PROCEDURES.—(1) An agency head may use procedures other than competitive procedures to enter into a contract referred to in subsection (a) only if an exception in subsection (c) of section 303 applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

"(2) The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

"(3) The solicitation shall include the following:

"(A) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

"(B) The maximum quantity or dollar value of the services to be procured under the contract.

"(C) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services to be procured under the contract.

"(4)(A) An agency head may, on the basis of one solicitation, award separate contracts under this section for the same or similar services to two or more sources if the solicitation states that the agency head has the option to do so.

"(B) If, in the case of a contract for advisory and assistance services to be entered into under the authority of this section, the contract period is to exceed 3 years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

"(i) provide for a multiple award authorized under subparagraph (A); and

"(ii) include a statement that the agency head may also elect to award only one contract if the agency head determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

"(C) Subparagraph (B) does not apply in the case of a solicitation for which the agency head determines in writing that, because the services required under the contract

are unique or highly specialized, it is not practicable to award more than one contract.

"(5) A contract referred to in subsection (a) shall contain the same information that is required by paragraph (3) to be included in the solicitation of offers for that contract.

"(d) ORDER PROCEDURES.—(1) The following actions are not required for a task order issued under a contract entered into in accordance with this section:

"(A) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(B) Except as provided in paragraph (2), a competition (or a waiver of competition approved in accordance with section 303(f)) that is separate from that used for entering into the contract.

"(2)(A) When multiple contracts are awarded pursuant to subsection (c)(4), all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task order in excess of $2,500 that is to be issued under any of the contracts unless—

"(i) the agency's need for the services ordered is of such unusual urgency that competition would re-

sult in unacceptable delays in fulfilling the agency's needs;

"(ii) only one such contractor is capable of providing the services required at the level of quality required because the services ordered are unique or highly specialized;

"(iii) the task order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task order already issued on a competitive basis; or

"(iv) the order must be placed with a particular contractor in order to satisfy a minimum guarantee.

"(B) When a task order is issued in accordance with subparagraph (A), the order shall include a statement of work that clearly specifies all tasks to be performed under the order.

"(3) A protest is not authorized in connection with the issuance or proposed issuance of a task order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT.—(1) A task order may not increase the scope, period, or maximum value of the contract under which the order is issued. The scope, period, or maximum

value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 303 and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(4)(A) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (c), a contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the agency head determines that—

"(i) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

"(ii) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

"(B) A contract may be extended under the authority of subparagraph (A) only once and only in accordance with the limitations and requirements of this subsection.

"(f) TASK ORDER OMBUDSMAN.—Each agency head who awards multiple contracts pursuant to subsection (c)(4) shall appoint or designate a task order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task orders when required under subsection (d)(2). The task order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

"(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the agency head entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

"(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit the authority of the head of an agency to enter into single or multiple task order contracts, or single or multiple delivery order contracts, for goods or services (other than

advisory and assistance services) under other provisions of this title or under any other provision of law.

''(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term 'advisory and assistance services' has the meaning given such term in section 1105(g) of title 31, United States Code.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by inserting after the item relating to section 303G the following new item:

''Sec. 303H. Task order contracts for advisory and assistance services.''.

SEC. 1055. ACQUISITION OF EXPERT SERVICES.

(a) EXCEPTION TO REQUIREMENT FOR USE OF COMPETITIVE PROCEDURES.—Section 303(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) is amended—

(1) by striking out ''or (B)'' and inserting in lieu thereof ''(B)''; and

(2) by inserting before the semicolon at the end the following: '', or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify''.

(b) PROCUREMENT NOTICE.—

(1) AMENDMENT OF OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)) is amended—

(A) by striking out ''or'' at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ''; or''; and

(C) by adding at the end the following:

''(F) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.''.

(2) AMENDMENT OF SMALL BUSINESS ACT.—Section 8(g) of the Small Business Act (15 U.S.C. 637(c)) is amended—

(A) by striking out ''or'' at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ''; or''; and

(C) by adding at the end the following:

''(F) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.''.

(c) REPEAL OF AMENDMENTS TO UNCODIFIED TITLE.—The following provisions of law are repealed:

(1) Section 532 of Public Law 101–509 (104 Stat. 1470) and the provision of law set out in quotes in that section.

(2) Section 529 of Public Law 102–393 (106 Stat. 1761) and the matters inserted and added by that section.

SEC. 1056. CONTINUED OCCUPANCY OF LEASED SPACE.

Section 303(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(d)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2)(A) For the purposes of applying subsection (c)(1) in the case of a follow-on lease to be entered into for the purpose of providing for continued occupancy of particular space in leased real property by a Federal agency, space may be treated as being available only from the lessor of such space and may be acquired through the use of procedures other than competitive procedures (without the justification otherwise required by subsection (f)) if a written determination is made by the contracting officer that—

"(i) the occupying agency has a continuing need for the space;

"(ii) the space meets the needs of the agency; and

"(iii) the lessor is willing to continue to provide the space at a fair market price determined by the contracting officer on the basis of a market survey or an appraisal conducted in accordance with generally accepted real property appraisal standards.

"(B) The authority under subparagraph (A) to use procedures other than competitive procedures to enter into a follow-on lease may be exercised not more than once to provide for continued occupancy of particular space in real

property by a particular Federal agency. The period of such follow-on lease may not exceed 5 years.

''(C) Nothing in this paragraph may be construed to prohibit the use of procedures other than competitive procedures to enter into a follow-on lease of real property for continued occupancy of particular space in real property by a Federal agency when an exception set forth in subsection (c) applies and the use of such procedures is justified and approved in accordance with subsection (f).''.

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.

(a) CONTENT OF SOLICITATION.—Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(1) in subsection (b)(1)(A)—

(A) by inserting ''and significant subfactors'' after ''all significant factors''; and

(B) by striking out ''(including price)'' and inserting ''(including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors)'';

(2) in subsection (b)(1)(B), by inserting ''and subfactors'' after ''factors'';

(3) in subsection (b)(2)(B), by striking out clause (i) and inserting in lieu thereof the following:

''(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and''; and

(4) by adding at the end the following new subsection:

''(c)(1) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an agency head—

''(A) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

''(B) shall include cost or price to the Government as an evaluation factor that must be considered in the evaluation of proposals; and

''(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

''(i) significantly more important than cost or price;

''(ii) approximately equal in importance to cost or price; or

''(iii) significantly less important than cost or price.

''(2) Nothing in this subsection prohibits an agency from—

''(A) providing additional information in a solicitation, including numeric weights for all evaluation factors; or

''(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest price or cost.''.

(b) EVALUATION AND AWARD.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) in subsection (a), by inserting '', and award a contract,'' after ''competitive proposals'';

(2) in subsection (c), by inserting ''in accordance with subsection (a)'' in the second sentence after ''shall evaluate the bids''; and

(3) in subsection (d)—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

''(1) An agency head shall evaluate competitive proposals in accordance with subsection (a) and may award a contract—

''(A) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

''(B) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), provided that, as required by section 303A(b)(2)(B)(i), the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.'';

(B) by striking out paragraphs (2) and (3) and by redesignating paragraph (4) as paragraph (2); and

(C) in paragraph (2), as redesignated by subparagraph (B), by inserting ''cost or'' before ''price'' in the first sentence.

(c) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to—

(A) solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act; and

(B) contracts awarded pursuant to those solicitations.

(2) AUTHORITY TO APPLY AMENDMENTS EARLY.—The head of an executive agency may apply the amendments made by this section to solicitations issued before the end of the period referred to in paragraph (1). The head of the executive agency shall publish in the Federal Register notice of any such earlier date of application at least 10 days before that date.

SEC. 1062. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.

Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a), as amended by

section 1061(a)(4), is further amended by adding at the end the following new subsection:

''(d) An agency head, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the agency head has determined that there is a reasonable likelihood that the options will be exercised.''.

SEC. 1063. PROMPT NOTICE OF AWARD.

(a) SEALED BID PROCEDURES.—Subsection (c) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following: ''As soon as practicable after the date of contract award, the agency head shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify all offerors not awarded the contract that the contract has been awarded.''.

(b) COMPETITIVE PROPOSALS PROCEDURES.—Paragraph (2) of section 303B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(d)), as redesignated by section 1061(b)(3)(B), is amended in the second sentence by striking out ''source and shall promptly notify'' and inserting in lieu thereof ''source. As soon as practicable after the date of contract award, the agency

head shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify''.

SEC. 1064. POST-AWARD DEBRIEFINGS.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection (e):

''(e)(1) When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An employee of the executive agency shall debrief the offeror promptly after receipt of the request by the agency.

''(2) The debriefing shall include, at a minimum—

''(A) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

''(B) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

"(C) the overall ranking of all offers;

"(D) a summary of the rationale for the award;

"(E) in the case of a proposal that incorporates equipment that is a commercial item, the make and model of the item incorporated in the offer of the contractor awarded the contract; and

"(F) reasonable responses to questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(3) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552 of title 5, United States Code, including information relating to—

"(A) trade secrets;

"(B) privileged or confidential manufacturing processes and techniques; and

"(C) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

"(4) Each solicitation for competitive proposals shall include a statement that information described in paragraph (2) may be disclosed in post-award debriefings.

"(5) If, within one year after the date of the contract award and as a result of a successful procurement protest or otherwise, the executive agency seeks to fulfill the requirement under the contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency head shall make available to all offerors—

"(A) the information provided in debriefings under this subsection regarding the offer of the contractor awarded the contract; and

"(B) the comparable debriefing information that was prepared with respect to the original offerors.

"(6) The contracting officer shall include a summary of the debriefing in the contract file.".

SEC. 1065. PROTEST FILE.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1064(1), is further amended by adding at the end the following:

"(h)(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, an agency head, a protest is filed pursuant to the proce-

dures in subchapter V of chapter 35 of title 31, United States Code, and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

''(2) Information exempt from disclosure under section 552 of title 5, United States Code, may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

''(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).''.

SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLEMENT OF PROTESTS.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1065, is further amended by adding at the end the following new subsection:

''(i) If, in connection with a protest, an agency head determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the agency head may take—

''(1) any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31, United States Code; and

''(2) may pay costs described in paragraph (1) of section 3554(c) of such title within the limits referred to in paragraph (2) of such section.''.

SEC. 1067. TWO-PHASE SELECTION PROCEDURES.

(a) PROCEDURES AUTHORIZED.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1054, is further amended by inserting after section 303H the following new section:

''TWO-PHASE SELECTION PROCEDURES

''SEC. 303I. (a) PROCEDURES AUTHORIZED.—The head of an executive agency may use two-phase selection procedures for entering into a contract for the acquisition of property or services when the agency head determines that three or more offers will be received for such contract, substantial design work must be performed before an offeror can develop a price or cost proposal for such contract, and the offerors will incur a substantial amount of expenses in preparing the offers.

''(b) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

''(1) The agency head solicits proposals that—

''(A) include information on the offerors'—

"(i) technical approach; and

"(ii) technical qualifications; and

"(B) do not include—

"(i) detailed design information; or

"(ii) cost or price information.

"(2) The agency head evaluates the proposals on the basis of evaluation criteria set forth in the solicitation, except that the agency head does not consider cost-related or price-related evaluation factors.

"(3) The agency head selects at least three offerors as the most highly qualified to provide the property or services under the contract and requests the selected offerors to submit competitive proposals that include cost or price information.

"(4) The agency head awards the contract in accordance with section 303B(d).

"(c) RESOURCE COMPARISON CRITERION REQUIRED.—In using two-phase selection procedures for entering into a contract, the agency head shall establish a resource criterion or a financial criterion applicable to the contract in order to provide a consistent basis for comparing the offerors and their proposals.

"(d) TWO-PHASE SELECTION PROCEDURES DEFINED.—In this section, the term 'two-phase selection procedures' means procedures described in subsection (b) that are

used for the selection of a contractor on the basis of cost or price and other evaluation criteria to provide property or services in accordance with the provisions of a contract which requires the contractor to design the property to be acquired under the contract and produce or construct such property.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1054, is further amended by inserting after the item relating to section 303H the following new item:

''Sec. 303I. Two-phase selection procedures.''.

Subpart C—Kinds of Contracts

SEC. 1071. AGENCY HEAD DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)) is amended by striking out the second sentence.

SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1067, is further amended by inserting after section 303I the following new section:

''MULTIYEAR CONTRACTS

''SEC. 303J. (a) AUTHORITY.—The head of an executive agency may enter into a multiyear contract for the acquisition of property or services if—

"(1) funds are available and obligated for such contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with any necessary termination of such contract; and

"(2) the agency head determines that—

"(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

"(B) a multiyear contract will serve the best interests of the United States by encouraging effective competition or promoting economy in administration, performance, and operation of the agency's programs.

"(b) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of such contract in any fiscal year covered by the contract. Amounts available for paying termination costs shall remain available for such purpose until the costs associated with termination of the contract are paid.

"(c) RULE OF CONSTRUCTION.—Nothing in this section is intended to modify or affect any other provision of law that authorizes multiyear contracts.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1067, is further amended by inserting after the item relating to section 303I the following new item:

''Sec. 303J. Multiyear contracts.''.

SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING FISCAL YEARS.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1072, is further amended by inserting after section 303J the following new section:

''SEVERABLE SERVICES CONTRACTS FOR PERIODS CROSSING FISCAL YEARS

''SEC. 303K. (a) AUTHORITY.—The head of an executive agency may enter into a severable contract for procurement of services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

''(b) AVAILABILITY OF FUNDS.—To the extent provided in appropriations Acts, funds obligated for a contract entered into under the authority of subsection (a) shall remain available until no longer needed to pay for such contract.

''(c) SEVERABLE CONTRACT DEFINED.—In this section, the term 'severable contract' means a contract that contains a clause that makes the effectiveness of the contract

for periods after the end of the fiscal year in which the performance of the contract begins subject to the availability of appropriations.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1072, is further amended by inserting after the item relating to section 303J the following new item:

''Sec. 303K. Severable services contracts for periods crossing fiscal years.''.

SEC. 1074. ECONOMY ACT PURCHASES.

(a) REGULATIONS REQUIRED.—Not later than six months after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations governing the exercise of the authority under section 1535 of title 31, United States Code, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

(b) CONTENT OF REGULATIONS.—The regulations prescribed pursuant to subsection (a) shall—

(1) require that each purchase described in subsection (a) be approved in advance by a contracting officer of the ordering agency with authority to contract for the goods or services to be purchased or by another official in a position specifically designated by regulation to approve such purchase;

(2) provide that such a purchase of goods or services may be made only if—

(A) the purchase is appropriately made under a contract that the agency filling the purchase order entered into, before the purchase order, in order to meet the requirements of such agency for the same or similar goods or services;

(B) the agency filling the purchase order is better qualified to enter into or administer the contract for such goods or services by reason of capabilities or expertise that is not available within the ordering agency; or

(C) the agency or unit filling the order is specifically authorized by law or regulations to purchase such goods or services on behalf of other agencies;

(3) prohibit any such purchase under a contract or other agreement entered into or administered by an agency not covered by the provisions of chapter 137 of title 10, United States Code, or title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and not covered by the Federal Acquisition Regulation unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency; and

(4) prohibit any payment to the agency filling a purchase order of any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled.

(c) MONITORING SYSTEM REQUIRED.—The Administrator for Federal Procurement Policy shall ensure that, not later than one year after the date of the enactment of this Act, systems for collecting and evaluating procurement data are capable of collecting and evaluating appropriate data on procurements conducted under the regulations prescribed pursuant to subsection (a).

(d) TERMINATION.—This section shall cease to be effective one year after the date on which final regulations prescribed pursuant to subsection (a) take effect.

PART III—ACQUISITIONS GENERALLY

SEC. 1091. POLICY REGARDING CONSIDERATION OF CONTRACTOR PAST PERFORMANCE.

(a) POLICY.—Section 2 of the Office of Federal Procurement Policy Act (41 U.S.C. 401) is amended—

(1) by striking out ''and'' at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof ''; and''; and

(3) by adding at the end the following new paragraph:

''(14) establishing policies and procedures that encourage the consideration of contractors' past performance in the selection of contractors.''.

(b) GUIDANCE REQUIRED.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405) is amended by adding at the end the following:

''(j)(1) Congress makes the following findings:

''(A) Past contract performance of an offeror is one of the relevant factors that contracting officials of executive agencies should consider in entering into contracts.

''(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be entered into by that official.

''(2) The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include—

''(A) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifica-

tions, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

''(B) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary; and

''(C) policies for ensuring that offerors are afforded an opportunity to submit information on past contract performance and that information submitted by offerors is considered.

''(3) The Administrator shall prescribe for all executive agencies the policy regarding the period for which information on past performance of offerors may be maintained and considered.

''(4) In the case of an offeror regarding whom there is no information on past contract performance or regarding whom information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.''.

SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL REPORT ON COMPETITION.

Section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419) is repealed.

Subtitle B—Truth in Negotiations

PART I—ARMED SERVICES ACQUISITIONS

SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF APPLICABILITY.

(a) REPEAL OF REVERSION TO LOWER THRESHOLD.—Paragraph (1)(A) of section 2306a(a) of title 10, United States Code, is amended—

(1) in clause (i), by striking out ''and before January 1, 1996,''; and

(2) in clause (ii), by striking out ''or after December 31, 1995,''.

(b) ADJUSTMENTS FOR CHANGES IN DOLLAR VALUES.—Section 2306a(a) of such title is amended by adding at the end the following new subparagraph:

''(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not

evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.''.

SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA REQUIREMENTS.

(a) EXCEPTIONS STATED.—Subsection (b) of section 2306a of title 10, United States Code, is amended to read as follows:

''(b) EXCEPTIONS.—(1) Submission of cost and pricing data shall not be required under subsection (a)—

''(A) in the case of a contract, a subcontract, or a contract or subcontract modification, for which the price agreed upon is based on—

''(i) adequate price competition;

''(ii) established catalog or market prices of commercial items or of services customarily used for other than Government purposes, as the case may be, that are sold in substantial quantities to the general public; or

''(iii) prices set by law or regulation; or

''(B) in an exceptional case when the head of the agency concerned determines that the requirements of this section may be waived and states in writing the reasons for such determination.

''(2) Submission of cost and pricing data shall not be required under subsection (a) in the case of a modification of a contract or subcontract for a commercial item if—

''(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost and pricing data may not be required by reason of paragraph (1)(A);

''(B) the modification is not a case in which paragraph (1)(A) prohibits the head of an agency from requiring submission of cost and pricing data; and

''(C) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of a noncommercial item.''.

(b) CONFORMING AMENDMENT TO REFERENCE.—Subsection (a)(5) of such section is amended by striking out ''subsection (b)(2)'' and inserting in lieu thereof ''subsection (b)(1)(B)''.

SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUBMISSION NOT OTHERWISE REQUIRED.

Subsection (c) of section 2306a of title 10, United States Code, is amended to read as follows:

"(c) LIMITATION ON AUTHORITY TO REQUIRE COST OR PRICING DATA.—When cost or pricing data are not required to be submitted under this section by reason of a $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection) or by reason of an exception set forth in paragraph (1)(A) or (2) of subsection (b), submission of such data may not be required unless the head of an agency concerned determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract to which the data relate. In any case in which the head of an agency requires such data to be submitted in accordance with the preceding sentence, the agency head shall document in writing the reasons for such requirement.".

SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL ITEMS.

Section 2306a of title 10, United States Code, is amended—

(1) by redesignating subsections (d), (e), (f), and (g) as subsections (e), (f), (g), and (i), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent prac-

ticable, the head of an agency shall conduct procurements of commercial items on a competitive basis.

"(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer shall nonetheless exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer develops or obtains from the offeror or contractor, or from another source or sources, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be.

"(3)(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, the head of an agency shall have the right to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this section.

"(B) The right under subparagraph (A) shall expire 3 years after the date of award of the contract, or 3 years after the date of the modification of the contract, with respect to which the information was provided.".

SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.

Section 2306a of title 10, United States Code, is amended by striking out subsection (g), as redesignated by section 1204(1), and inserting in lieu thereof the following:

"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the rights provided by section 2313 of this title.".

SEC. 1206. REQUIRED REGULATIONS.

Section 2306a of title 10, United States Code, as amended by sections 1204 and 1205, is further amended by inserting after subsection (g) the following new subsection:

"(h) REQUIRED REGULATIONS.—The Secretary shall prescribe regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost

or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed an applicable $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which such offeror has previously sold the same or similar products.''.

SEC. 1207. CONSISTENCY OF TIME REFERENCES.

Section 2306a of title 10, United States Code, as amended by section 1204(1), is further amended—

(1) in subparagraphs (A)(ii) and (B)(ii) of subsection (e)(4), by inserting ''or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties,'' after ''(or price of the modification)''; and

(2) in subsection (i), by inserting ''or, if applicable consistent with subsection (d)(1)(B), another date agreed upon between the parties'' after ''(or the price of a contract modification)''.

SEC. 1208. EXCEPTION FOR TRANSFERS BETWEEN DIVISIONS, SUBSIDIARIES, AND AFFILIATES.

Subsection (i) of section 2306a of title 10, United States Code, as redesignated by section 1204(1), is amended to read as follows:

''(i) DEFINITIONS.—In this section:

''(1) The term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

''(2) The term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor.''.

SEC. 1209. REPEAL OF SUPERSEDED PROVISION.

Subsections (b) and (c) of section 803 of Public Law 101–510 (10 U.S.C. 2306a note) are repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO ENSURE UNIFORM TREATMENT OF COST OR PRICING DATA.

(a) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) in section 304, by striking out subsection (d); and

(2) by inserting after section 304 the following new section:

"COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

"SEC. 304A. (a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) An agency head shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

"(A) An offeror for a prime contract under this title to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

"(i) in the case of a prime contract entered into after the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the price of the contract to the United States is expected to exceed $500,000; and

"(ii) in the case of a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the price of the contract to the United States is expected to exceed $100,000.

"(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

"(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;

"(ii) in the case of a change or modification made to a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and

"(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.

"(C) An offeror for a subcontract (at any tier) of a contract under this title shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

"(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $500,000;

"(ii) in the case of a subcontract entered into under a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and

"(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.

"(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

"(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and

"(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.

"(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the agency head concerned to sub-

mit such data in accordance with subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

"(3) Cost or pricing data required to be submitted under paragraph (1) (or in accordance with subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

"(4) Except as provided under subsection (b), this section applies to contracts entered into by an agency head on behalf of a foreign government.

"(5) For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(B) shall be considered as having been required to make available cost or pricing data under this section.

"(6)(A) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or be-

fore the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the agency head that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

''(B) An agency head is not required to modify a contract under subparagraph (A) if that agency head determines that the submission of cost or pricing data with respect to that contract should be required in accordance with subsection (c).

''(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

''(b) EXCEPTIONS.—(1) Submission of cost and pricing data shall not be required under subsection (a)—

''(A) in the case of a contract, a subcontract, or a contract or subcontract modification, for which the price agreed upon is based on—

''(i) adequate price competition;

"(ii) established catalog or market prices of commercial items or of services customarily used for other than Government purposes, as the case may be, that are sold in substantial quantities to the general public; or

"(iii) prices set by law or regulation; or

"(B) in an exceptional case when the agency head concerned determines that the requirements of this section may be waived and states in writing the reasons for such determination.

"(2) Submission of cost and pricing data shall not be required under subsection (a) in the case of a modification of a contract or subcontract for a commercial item if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost and pricing data may not be required by reason of paragraph (1)(A);

"(B) the modification is not a case in which paragraph (1)(A) prohibits the agency head from requiring submission of cost and pricing data; and

"(C) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of a noncommercial item.

"(c) LIMITATION ON AUTHORITY TO REQUIRE COST OR PRICING DATA.—When cost or pricing data are not required to be submitted under this section by reason of a $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection) or by reason of an exception in paragraph (1)(A) or (2) of subsection (b), submission of such data may not be required unless the agency head concerned determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract to which the data relate. In any case in which the agency head requires such data to be submitted in accordance with the preceding sentence, the agency head shall document in writing the reasons for such requirement.

"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent practicable, an agency head shall conduct procurements of commercial items on a competitive basis.

"(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer shall nonetheless exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer devel-

ops or obtains from the offeror or contractor, or from another source or sources, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be.

"(3)(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, an agency head shall have the right to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this section.

"(B) The right under subparagraph (A) shall expire 3 years after the date of award of the contract, or 3 years after the date of the modification of the contract, with respect to which the information was provided.

"(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, in-

cluding profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the agency head that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

''(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

''(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

''(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

"(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

"(i) was the sole source of the property or services procured; or

"(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

"(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

"(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

"(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

"(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—

"(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

"(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

"(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

"(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

"(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the

modification) or, if applicable under paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

"(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract with an executive agency subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

"(A) for interest on the amount of such overpayment, to be computed—

"(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

"(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

"(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

"(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the rights provided by section 304B(a)(2).

"(h) REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall include regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed an applicable $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which such offeror has previously sold the same or similar products.

"(i) DEFINITIONS.—In this section:

''(1) The term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

''(2) The term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor.''.

(b) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 304 the following:

''Sec. 304A. Cost or pricing data: truth in negotiations.''.

SEC. 1252. REPEAL OF OBSOLETE PROVISION.

(a) REPEAL.—Section 303E of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253e) is repealed.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the item relating to section 303E.

Subtitle C—Research and Development

SEC. 1301. RESEARCH PROJECTS.

(a) AUTHORIZED MEANS.—Subsection (b) of section 2358 of title 10, United States Code, is amended to read as follows:

''(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

''(1) by contract entered into with, grant made to, or cooperative agreement entered into with educational or research institutions, private businesses, or other persons in accordance with the provisions of chapter 63 of title 31;

''(2) through one or more military departments;

''(3) by using employees and consultants of the Department of Defense; or

''(4) by mutual agreement with the head of any other department or agency of the Federal Government.''.

(b) CAPTION AMENDMENT.—The caption of subsection (c) of such section is amended by striking out ''MILITARY'' and inserting in lieu thereof ''DEPARTMENT OF DEFENSE''.

(c) ADVANCED RESEARCH PROJECTS.—

(1) RESTORATION AND REVISION OF FORMER STATEMENT OF AUTHORITY.—Section 2371 of title 10, United States Code, is amended—

(A) by redesignating subsections (a), (b), (c), (d), (e), and (f) as subsections (b), (c), (d), (e), (f), and (g), respectively; and

(B) by inserting before subsection (b), as so redesignated, the following new subsection (a):

''(a) The Secretary of Defense, acting through the Advanced Research Projects Agency and such other elements of the Department of Defense as the Secretary may designate, and the Secretary of each military department, in carrying out basic, applied, and advanced research projects, may enter into other transactions, in addition to contracts, grants, and cooperative agreements authorized by section 2358 of this title.''.

(2) CONFORMING AMENDMENTS.—Such section, as amended by paragraph (1), is further amended—

(A) in subsection (b)—

(i) in paragraph (1), by inserting ''or subsection (a)'' after ''section 2358 of this title''; and

(ii) in paragraph (2), by striking out ''subsection (d)'' and inserting in lieu thereof ''subsection (e)'';

(B) in subsection (c), by inserting ''section 2358 of this title or'' after ''under'';

(C) in subsection (d)—

(i) in paragraph (1), by striking out ''this section'' and inserting in lieu thereof ''section 2358 of this title or subsection (a)''; and

(ii) in paragraph (3), by striking out ''this section'' and inserting in lieu thereof ''section 2358 of this title or subsection (a)'';

(D) in subsection (e), by inserting ''or subsection (a)'' in the first sentence after ''section 2358 of this title''; and

(E) in subsection (f)—

(i) in the first sentence, by striking out ''under this section'' and inserting in lieu thereof ''under section 2358 of this title or subsection (a)'';

(ii) in paragraph (4), by striking out ''subsection (a)'' and inserting in lieu thereof ''subsection (b)''; and

(iii) in paragraph (5), by striking out ''subsection (d)'' and inserting in lieu thereof ''subsection (e)''.

SEC. 1302. ELIMINATION OF INFLEXIBLE TERMINOLOGY REGARDING COORDINATION AND COMMUNICATION OF DEFENSE RESEARCH ACTIVITIES.

Section 2364 of title 10, United States Code, is amended—

(1) in subsection (b)(5), by striking out ''milestone 0, milestone I, and milestone II decisions'' and inserting in lieu thereof ''acquisition program decisions''; and

(2) in subsection (c), by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

''(2) The term 'acquisition program decisions' has the meaning given such term in regulations prescribed by the Secretary of Defense for the purposes of this section.''.

Subtitle D—Procurement Protests

PART I—PROTESTS TO THE COMPTROLLER GENERAL

SEC. 1401. PROTEST DEFINED.

Paragraph (1) of section 3551 of title 31, United States Code, is amended to read as follows:

''(1) 'protest' means a written objection by an interested party—

''(i) to a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services;

''(ii) to the cancellation of such a solicitation or other request;

''(iii) to an award or proposed award of such a contract; or

''(iv) to a termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract;''.

SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CONTRACTS PENDING DECISION.

(a) PERIODS FOR CERTAIN ACTIONS.—Section 3553 of title 31, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking out ''one working day of'' and inserting in lieu thereof ''one day after''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking out ''25 working days from'' and inserting in lieu thereof ''35 days after''; and

(ii) in subparagraph (C), by striking out ''10 working days from'' and inserting in lieu thereof ''25 days after''; and

(2) in subsection (c)(3), by striking out ''thereafter'' and inserting in lieu thereof ''after the making of such finding''.

(b) SUSPENSION OF PERFORMANCE.—Subsection (d) of such section is amended to read as follows:

''(d)(1) A contractor awarded a Federal agency contract may, during the period described in paragraph (4), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract unless the contracting officer responsible for the award of the contract withholds authorization to proceed with performance of the contract.

''(2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (4) if the contracting officer determines in writing that—

''(A) a protest is likely to be filed; and

''(B) the immediate performance of the contract is not in the best interests of the United States.

''(3)(A) If the Federal agency awarding the contract receives notice of a protest in accordance with this section during the period described in paragraph (4)—

"(i) the contracting officer may not authorize performance of the contract to begin while the protest is pending; or

"(ii) if contract performance authorization to proceed was not withheld in accordance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

"(B) Performance and related activities suspended pursuant to subparagraph (A)(ii) by reason of a protest may not be resumed while the protest is pending.

"(C) The head of the procuring activity may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

"(i) upon a written finding that—

"(I) performance of the contract is in the best interests of the United States; or

"(II) urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

"(ii) after the Comptroller General is notified of that finding.

"(4) The period referred to in paragraphs (2) and (3)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—

"(A) the date that is 10 days after the date of the contract award; or

"(B) the date that is 5 days after—

"(i) the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required; or

"(ii) in the case of a contract for which no debriefing is required, the date on which the unsuccessful offeror receives the notification of contract award.".

SEC. 1403. DECISIONS ON PROTESTS.

(a) PERIODS FOR CERTAIN ACTIONS.—Section 3554(a) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking out "90 working days from" and inserting in lieu thereof "125 days after";

(2) in paragraph (2), by striking out "45 calendar days from" and inserting "65 days after";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following new paragraph (3):

''(3) An amendment to a protest that adds a new ground of protest, if timely made, should be resolved, to the maximum extent practicable, within the time limit established under paragraph (1) of this subsection for final decision of the initial protest. If an amended protest cannot be resolved within such time limit, the Comptroller General may resolve the amended protest through the express option under paragraph (2) of this subsection.''.

(b) GAO RECOMMENDATIONS ON PROTESTS.—

(1) IMPLEMENTATION OF RECOMMENDATIONS.—Section 3554 of title 31, United States Code, is amended—

(A) in subsection (b), by adding at the end the following new paragraph:

''(3) If the Federal agency fails to implement fully the recommendations of the Comptroller General under this subsection with respect to a solicitation for a contract or an award or proposed award of a contract within 60 days after receiving the recommendations, the head of the procuring activity responsible for that contract shall report such

failure to the Comptroller General not later than 5 working days after the end of such 60-day period.'';

(B) by striking out subsection (c) and inserting in lieu thereof the following:

''(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency conducting the procurement pay to an appropriate interested party the costs of—

''(A) filing and pursuing the protest, including reasonable attorney's fees and consultant and expert witness fees; and

''(B) bid and proposal preparation.

''(2) No party may be paid, pursuant to a recommendation made under the authority of paragraph (1)—

''(A) costs for consultant and expert witness fees that exceed the rates provided under section 504(b)(1)(A) of title 5 for expert witnesses; or

''(B) costs for attorney's fees that exceed the rates provided for attorneys under section 504(b)(1)(A) of title 5.

''(3) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency shall—

''(A) pay the costs promptly; or

''(B) if the Federal agency does not make such payment, promptly report to the Comptroller General the reasons for the failure to follow the Comptroller General's recommendation.

''(4) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency and the interested party shall attempt to reach an agreement on the amount of the costs to be paid. If the Federal agency and the interested party are unable to agree on the amount to be paid, the Comptroller General may, upon the request of the interested party, recommend to the Federal agency the amount of the costs that the Federal agency should pay.''; and

(C) by striking out subsection (e) and inserting in lieu thereof the following:

''(e)(1) The Comptroller General shall report promptly to the Committee on Governmental Affairs and the Committee on Appropriations of the Senate and to the Committee on Government Operations and the Committee on Appropriations of the House of Representatives any case in which a Federal agency fails to implement fully a recommendation of the Comptroller General under subsection (b) or (c). The report shall include—

"(A) a comprehensive review of the pertinent procurement, including the circumstances of the failure of the Federal agency to implement a recommendation of the Comptroller General; and

"(B) a recommendation regarding whether, in order to correct an inequity or to preserve the integrity of the procurement process, the Congress should consider—

"(i) private relief legislation;

"(ii) legislative rescission or cancellation of funds;

"(iii) further investigation by Congress; or

"(iv) other action.

"(2) Not later than January 31 of each year, the Comptroller General shall transmit to the Congress a report containing a summary of each instance in which a Federal agency did not fully implement a recommendation of the Comptroller General under subsection (b) or (c) during the preceding year. The report shall also describe each instance in which a final decision in a protest was not rendered within 125 days after the date the protest is submitted to the Comptroller General.".

(2) REQUIREMENT FOR PAYMENT IN ACCORDANCE WITH PRIOR GAO DETERMINATIONS.—Costs to which the Comptroller General declared an interested

party to be entitled under section 3554 of title 31, United States Code, as in effect immediately before the enactment of this Act, shall, if not paid or otherwise satisfied by the Federal agency concerned before the date of the enactment of this Act, be paid promptly.

SEC. 1404. REGULATIONS.

(a) COMPUTATION OF PERIODS.—Section 3555 of title 31, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (d); and

(2) by inserting after subsection (a) the following new subsection (b):

''(b) The procedures shall provide that, in the computation of any period described in this subchapter—

''(1) the day of the act, event, or default from which the designated period of time begins to run not be included; and

''(2) the last day after such act, event, or default be included, unless—

''(A) such last day is a Saturday, a Sunday, or a legal holiday; or

''(B) in the case of a filing of a paper at the General Accounting Office or a Federal agency, such last day is a day on which weather or

other conditions cause the closing of the General Accounting Office or Federal agency, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.''.

(b) ELECTRONIC FILINGS AND DISSEMINATIONS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection:

''(c) The Comptroller General may prescribe procedures for the electronic filing and dissemination of documents and information required under this subchapter. In prescribing such procedures, the Comptroller General shall consider the ability of all parties to achieve electronic access to such documents and records.''.

(c) REPEAL OF OBSOLETE DEADLINE.—Subsection (a) of such section is amended by striking out ''Not later than January 15, 1985, the'' and inserting in lieu thereof ''The''.

PART II—PROTESTS IN THE FEDERAL COURTS

SEC. 1421. NONEXCLUSIVITY OF REMEDIES.

Section 3556 of title 31, United States Code, is amended by striking out ''a district court of the United States or the United States Claims Court'' in the first sentence and inserting in lieu thereof ''the United States Court of Federal Claims''.

SEC. 1422. JURISDICTION OF THE UNITED STATES COURT OF FEDERAL CLAIMS.

(a) CLAIMS AGAINST THE UNITED STATES AND BID PROTESTS.—Section 1491 of title 28, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (e);

(2) in subsection (a)—

(A) by striking out ''(a)(1)'' and inserting in lieu thereof ''(a) CLAIMS AGAINST THE UNITED STATES.—'';

(B) in paragraph (2), by striking out ''(2) To'' and inserting in lieu thereof ''(b) REMEDY AND RELIEF.—To''; and

(C) by striking out paragraph (3); and

(3) by inserting after subsection (b), as designated by paragraph (2)(B), the following new subsection (c):

''(c) BID PROTESTS.—(1) The United States Court of Federal Claims has jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract. The court has jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

"(2) To afford relief in such an action, the court may award any relief that the court considers proper, including declaratory and injunctive relief.

"(3) In exercising jurisdiction under this subsection, the court shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

"(4) The district courts of the United States do not have jurisdiction of any action referred to in paragraph (1).".

(b) CLERICAL AMENDMENTS.—

*(1) SECTION HEADING.—The heading of such section is amended by inserting "**BID PROTESTS;**" after "**GENERALLY;**"*.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1491 and inserting in lieu thereof the following:

"1491. Claims against United States generally; bid protests; actions involving Tennessee Valley Authority.".

PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

SEC. 1431. REVOCATION OF DELEGATIONS OF PROCUREMENT AUTHORITY.

Section 111(b)(3) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(b)(3)) is amended by inserting after the third sentence the following: ''The Administrator may revoke a delegation of authority with respect to a particular contract before or after award of the contract, except that the Administrator may revoke a delegation after the contract is awarded only when there is a finding of a violation of law or regulation in connection with the contract award.''.

SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS.

The first sentence of section 111(f)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(1)) is amended to read as follows: ''Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the 'board') shall review, as provided in this subsection, any decision by a contracting officer that is alleged to vio-

late a statute, a regulation, or the conditions of a delegation of procurement authority.''.

SEC. 1433. PERIODS FOR CERTAIN ACTIONS.

(a) SUSPENSION OF PROCUREMENT AUTHORITY.—Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended—

(1) in paragraph (2) by adding at the end the following new subparagraph:

''(C) If, in the case of a preaward protest, the board suspends the procurement authority of the Administrator or the Administrator's delegation of procurement authority, the Administrator or the delegate, as the case may be, may continue with the procurement action up to, but not including, the awarding of the contract if the Administrator or the delegate, as the case may be, determines that it is in the best interests of the United States to do so.''; and

(2) in paragraph (3) by striking out subparagraph (A) and inserting in lieu thereof the following:

''(A)(i) If, with respect to an award of a contract, the board receives notice of a protest under this subsection within the period described in clause (ii), the board shall, at the request of an interested party, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delega-

tion of procurement authority for the protested procurement on an interim basis until the board can decide the protest.

''(ii) The period referred to in clause (i) is the period beginning on the date on which the contract is awarded and ending on the date that is 10 days after the date of the contract award or, if later, the date that is 5 days after—

''(I) the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required; or

''(II) in the case of a contract for which no debriefing is required, the date on which the unsuccessful offeror receives the notification of contract award.

''(iii) The board shall hold the requested hearing within 5 days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of section 2305(b)(5) of title 10, United States Code, or section 303B(e) of this Act, within 5 days after the later of the date of the filing of the protest or the date of the debriefing.''.

(b) FINAL DECISION.—Paragraph (4)(B) of such section 111(f) is amended—

(1) by striking out ''45 working days'' and inserting in lieu thereof ''65 days''; and

(2) by adding at the end the following: ''An amendment which adds a new ground of protest

should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.''.

SEC. 1434. DISMISSALS OF PROTESTS.

Section 111(f)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(4)) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:

''(C) The board may dismiss a protest that the board determines—

''(i) is frivolous;

''(ii) has been brought in bad faith; or

''(iii) does not state on its face a valid basis for protest.''.

SEC. 1435. AWARD OF COSTS.

Section 111(f)(5) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:

''(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the cost of filing and pursuing the protest (including reasonable attorney's fees and consultant and expert witness fees), and bid and proposal preparation. However, no party may be declared entitled to costs for consultant and expert witness fees that exceed the rates pro-

vided under section 504(b)(1)(A) of title 5, United States Code, for expert witnesses or to costs for attorney's fees that exceed the rates provided for attorneys under section 504(b)(1)(A) of title 5, United States Code.''.

SEC. 1436. DISMISSAL AGREEMENTS.

Section 111(f)(5) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(5)) is amended by adding at the end the following new subparagraphs:

''(D) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the board and shall be made a part of the public record (subject to any protective order considered appropriate by the board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement submitted to the board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

''(E) Payment of amounts due from an agency under subparagraph (C) or under the terms of a settlement agree-

ment under subparagraph (D) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The Federal agency concerned shall reimburse that appropriation account out of funds available for the procurement.''.

SEC. 1437. JURISDICTION OF DISTRICT COURTS.

Section 111(f)(6)(C) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(6)(C)) is amended by striking out ''a district court of the United States or''.

SEC. 1438. MATTERS TO BE COVERED IN REGULATIONS.

Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended by striking out paragraph (8) and inserting in lieu thereof the following:

''(7)(A) The board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.

''(B) The procedures shall provide that, in the computation of any period described in this subsection—

''(i) the day of the act, event, or default from which the designated period of time begins to run not be included; and

''(ii) the last day after such act, event, or default be included, unless—

"(I) such last day is a Saturday, a Sunday, or a legal holiday; or

"(II) in the case of a filing of a paper at the board, such last day is a day on which weather or other conditions cause the closing of the board or Federal agency, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.

"(C) The procedures may provide for electronic filing and dissemination of documents and information required under this subsection and in so providing shall consider the ability of all parties to achieve electronic access to such documents and records.

"(D) The procedures shall provide that if the board expressly finds that a protest or a portion of a protest is frivolous or has not been brought or pursued in good faith, or that any person has willfully abused the board's process during the course of a protest, the board may impose appropriate procedural sanctions, including dismissal of the protest.".

SEC. 1439. DEFINITIONS.

(a) PROTEST.—Section 111(f)(9)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(9)(A)) is amended to read as follows:

''(A) the term 'protest' means a written objection by an interested party—

''(i) to a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services;

''(ii) to the cancellation of such a solicitation or other request;

''(iii) to an award or proposed award of such a contract; or

''(iv) to a termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract;''.

(b) PREVAILING PARTY.—Section 111(f)(9) of such Act is amended—

(1) by striking out ''and'' at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ''; and''; and

(3) by adding at the end the following new subparagraph:

''(C) the term 'prevailing party', with respect to a determination of the board under paragraph (5)(B) that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority issued pursuant to this section, means a party that demonstrated such violation.''.

Subtitle E—Definitions and Other Matters

PART I—ARMED SERVICES ACQUISITIONS

SEC. 1501. DEFINITIONS.

Section 2302 of title 10, United States Code, is amended—

(1) by striking out paragraphs (3), (4), (5), and (7);

(2) by redesignating paragraph (6) as paragraph (5); and

(3) by inserting after paragraph (2) the following:

''(3) The terms 'commercial item', 'full and open competition', 'major system', 'nondevelopmental item', 'procurement', 'procurement system', 'responsible source', 'standards', and 'technical data', have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(4) The term 'simplified acquisition threshold' has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.''.

SEC. 1502. DELEGATION OF PROCUREMENT FUNCTIONS.

(a) CONSOLIDATION OF DELEGATION AUTHORITY.—Section 2311 of title 10, United States Code, is amended to read as follows:

''§ 2311. Delegation

''(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

''(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

"(1) the head of an agency may, within his agency, delegate functions and assign responsibilities relating to procurement;

"(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

"(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

"(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition and Technology from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

"(2) The regulations shall include the following provisions:

"(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be

reviewed by the Joint Requirements Oversight Council of the Department of Defense.

''(B) A provision that authorizes the Under Secretary of Defense for Acquisition and Technology to require a military department approved for termination or substantial reduction in participation in a joint acquisition program to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.''.

(b) CONFORMING REPEAL.—(1) Section 2308 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2308.

SEC. 1503. DETERMINATIONS AND DECISIONS.

Section 2310 of title 10, United States Code, is amended to read as follows:

''§ 2310. Determinations and decisions

''(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or for a class of purchases or contracts. Such determinations and decisions are final.

''(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(e)(1), 2307(e), or 2313(d)(2) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

''(2) Each finding referred to in paragraph (1) shall be final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.''.

SEC. 1504. UNDEFINITIZED CONTRACTUAL ACTIONS: RESTRICTIONS.

(a) CLARIFICATION OF LIMITATION.—Subsection (b) of section 2326 of title 10, United States Code, is amended—

(1) in the subsection caption, by striking out ''AND EXPENDITURE'';

(2) in paragraph (1)(B), by striking out ''or expended'';

(3) in paragraph (2), by striking out ''expend'' and inserting in lieu thereof ''obligate''; and

(4) in paragraph (3)—

(A) by striking out ''expended'' and inserting in lieu thereof ''obligated''; and

(B) by striking out ''expend'' and inserting in lieu thereof ''obligate''.

(b) WAIVER AUTHORITY.—Such subsection is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph (4):

''(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.''.

(c) INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.—Section 2326(g)(1)(B) of title 10, United States Code, is amended by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''.

SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUCTION SPECIAL TEST EQUIPMENT: CONTRACT TERMS AND CONDITIONS.

(a) REPEAL.—Section 2329 of title 10, United States Code, is repealed.

(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2329.

SEC. 1506. REGULATIONS FOR BIDS.

Section 2381(a) of title 10, United States Code, is amended by striking out ''(a) The Secretary'' and all that follows through the end of paragraph (1) and inserting in lieu thereof the following:

''(a) The Secretary of Defense or the Secretary of a military department may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and''.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1551. DEFINITIONS.

Section 309(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(c)) is amended by striking out ''and 'supplies' '' and inserting in lieu thereof '' 'supplies', 'commercial item', 'nondevelopmental item', and 'simplified acquisition threshold' ''.

SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) by redesignating sections 309 and 310 as sections 312 and 313, respectively; and

(2) by inserting after section 308 the following new section 309:

"DELEGATION

"SEC. 309. (a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, an agency head may delegate, subject to his direction, to any other officer or official of that agency, any power under this title.

"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this title by each executive agency for any other executive agency, and to facilitate joint procurement by those executive agencies—

"(1) an agency head may, within his executive agency, delegate functions and assign responsibilities relating to procurement;

"(2) the heads of two or more executive agencies may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

"(3) the heads of two or more executive agencies may create joint or combined offices to exercise procurement functions and responsibilities.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the

items relating to sections 309 and 310 and inserting in lieu thereof the following:

''Sec. 309. Delegation.
''Sec. 312. Definitions.
''Sec. 313. Statutes not applicable.''.

SEC. 1553. DETERMINATIONS AND DECISIONS.

(a) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1552, is further amended by inserting after section 309 the following new section 310:

''DETERMINATIONS AND DECISIONS

''SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this title by an agency head may be made for an individual purchase or contract or for a class of purchases or contracts. Such determinations and decisions are final.

''(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination under section 305(e) shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

''(2) Each finding referred to in paragraph (1) shall be final. The agency head making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1552, is further amended by inserting after the item relating to section 309 the following:

''Sec. 310. Determinations and decisions.''.

SEC. 1554. COOPERATIVE PURCHASING.

Subsection (b) of section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481), is amended to read as follows:

''(b)(1) The Administrator shall, as far as practicable, provide any of the services specified in subsection (a) of this section to any other Federal agency, mixed-ownership Government corporation (as defined in section 9101 of title 31, United States Code), or the District of Columbia, upon its request.

''(2)(A) The Administrator may provide for the use of Federal supply schedules or other contracts by any of the following entities upon request:

''(i) A State, any department or agency of a State, and any political subdivision of a State, including a local government.

''(ii) The District of Columbia.

''(iii) The Commonwealth of Puerto Rico.

''(iv) The government of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

"(B) Subparagraph (A) may not be construed to authorize an entity referred to in that subparagraph to order existing stock or inventory from federally owned and operated, or federally owned and contractor operated, supply depots, warehouses, or similar facilities.

"(3)(A) Upon the request of a qualified nonprofit agency for the blind or other severely handicapped that is to provide a commodity or service to the Federal Government under the Javits-Wagner-O'Day Act, the Administrator may provide any of the services specified in subsection (a) to such agency to the extent practicable.

"(B) A nonprofit agency receiving services under the authority of subparagraph (A) shall use the services directly in making or providing an approved commodity or approved service to the Federal Government.

"(C) In this paragraph:

"(i) The term 'qualified nonprofit agency for the blind or other severely handicapped' means—

"(I) a qualified nonprofit agency for the blind, as defined in section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3)); and

"(II) a qualified nonprofit agency for other severely handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4)).

''(ii) The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.

''(iii) The term 'Javits-Wagner-O'Day Act' means the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46–48c), commonly referred to as the Wagner-O'Day Act, that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), commonly referred to as the Javits-Wagner-O'Day Act.''.

TITLE II—CONTRACT ADMINISTRATION

Subtitle A—Contract Payment

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2001. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 2307 of title 10, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 2307. Contract financing";

(2) by striking out ''(a) The head of an agency'' and inserting in lieu thereof ''(b) PAYMENT AUTHORITY.—The head of an agency'';

(3) by striking out ''(b) Payments'' and inserting in lieu thereof ''(d) PAYMENT AMOUNT.—Payments'';

(4) by striking out ''(c) Advance payments'' and inserting in lieu thereof ''(e) SECURITY FOR ADVANCE PAYMENTS.—Advance payments'';

(5) by striking out ''(d)(1) The Secretary of Defense'' and inserting in lieu thereof ''(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense''; and

(6) by striking out ''(e)(1) In any case'' and inserting in lieu thereof ''(h) ACTION IN CASE OF FRAUD.—(1) In any case''.

(b) FINANCING POLICY.—Such section, as amended by subsection (a), is further amended by inserting after the section heading the following new subsection (a):

''(a) POLICY.—Payments authorized under this section and made for financing purposes should be made periodically or, when appropriate, on an advance basis and should be so made in a timely manner to facilitate contract performance while protecting the security interests of the Government. Government financing shall be provided only to

the extent necessary to ensure prompt and efficient performance and only after the availability of private financing is considered. A contractor's use of funds received as contract financing and the contractor's financial condition shall be monitored. If the contractor is a small business concern, special attention shall be given to meeting the contractor's financial need.''.

(c) PERFORMANCE-BASED PAYMENTS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection (c):

''(c) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (b) shall be made on any of the following bases:

''(1) Performance measured by objective, quantifiable methods such as receipt of items by the Federal Government, work measurement, or statistical process controls.

''(2) Accomplishment of events defined in the program management plan.

''(3) Other quantifiable measures of results.''.

(d) TERMINOLOGY CORRECTION.—Such section, as amended by subsection (a)(2), is further amended in subsection (b)(2) by striking out ''bid''.

(e) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection

(a)(4), is further amended in subsection (e) by inserting before the period at the end of the third sentence the following: ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.

(f) CONDITIONS FOR PROGRESS PAYMENTS.—Such section, as amended by subsection (a)(5), is further amended in subsection (f)—

(1) in the first sentence of paragraph (1), by striking out ''work, which'' and all that follows through ''accomplished'' and inserting in lieu thereof ''work accomplished that meets standards established under the contract''; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following:

''(3) This subsection applies to a contract for an amount equal to or greater than the simplified acquisition threshold.''.

(g) NAVY CONTRACTS.—Such section, as amended by subsection (a)(5), is further amended by inserting after subsection (f) the following new subsection (g):

''(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair,

maintenance, or overhaul of a naval vessel shall be not less than—

''(A) 95 percent, in the case of firms considered to be small businesses; and

''(B) 90 percent, in the case of all other firms.

''(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

''(3) The Secretary of the Navy shall ensure that, when partial, progress, or other payments are made under a contract for construction or conversion of a naval vessel, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.''.

(h) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CROSS REFERENCE.—Such section, as amended by subsection (a), is further amended in subsections (d) and (e) by striking out ''subsection (a)'' and inserting in lieu thereof ''subsection (b)''.

(2) TABLE OF CONTENTS.—The table of sections at the beginning of chapter 137 of title 10, United

States Code, is amended by striking out the item relating to section 2307 and inserting in lieu thereof the following:

''2307. Contract financing.''.

(i) REPEAL OF SUPERSEDED PROVISIONS.—

(1) PROGRESS PAYMENTS UNDER CERTAIN NAVY CONTRACTS.—

(A) REPEAL.—Section 7312 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7312.

(2) ADVANCEMENT OF PAYMENTS FOR NAVY SALVAGE OPERATIONS.—

(A) REPEAL.—Section 7364 of such title is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 637 of such title is amended by striking out the item relating to section 7364.

(3) PARTIAL PAYMENTS UNDER NAVY CONTRACTS.—

(A) REPEAL.—Section 7521 of such title is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 645 of such title is amended by striking out the item relating to section 7521.

SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.

(a) REPEAL.—Section 2355 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item relating to section 2355.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2051. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

''CONTRACT FINANCING'';

(2) by striking out ''(a) Any executive agency'' and inserting in lieu thereof ''(b) PAYMENT AUTHORITY.—Any executive agency'';

(3) by striking out ''(b) Payments'' and inserting in lieu thereof ''(d) PAYMENT AMOUNT.—Payments''; and

(4) by striking out ''(c) Advance payments'' and inserting in lieu thereof ''(e) SECURITY FOR ADVANCE PAYMENTS.—Advance payments''.

(b) FINANCING POLICY.—Such section, as amended by subsection (a), is further amended by inserting after the section heading the following new subsection (a):

''(a) POLICY.—Payments authorized under this section and made for financing purposes should be made periodically or, when appropriate, on an advance basis and should be so made in a timely manner to facilitate contract performance while protecting the security interests of the Government. Government financing shall be provided only to the extent necessary to ensure prompt and efficient performance and only after the availability of private financing is considered. A contractor's use of funds received as contract financing and the contractor's financial condition shall be monitored. If the contractor is a small business concern, special attention shall be given to meeting the contractor's financial need.''.

(c) PERFORMANCE-BASED PAYMENTS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection (c):

''(c) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (b) shall be made on any of the following bases:

''(1) Performance measured by objective, quantifiable methods such as receipt of items by the Federal Government, work measurement, or statistical process controls.

''(2) Accomplishment of events defined in the program management plan.

''(3) Other quantifiable measures of results.''.

(d) TERMINOLOGY CORRECTION.—Such section, as amended by subsection (a)(2), is further amended in subsection (b)(2) by striking out ''bid''.

(e) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(4), is further amended in subsection (e) by inserting before the period at the end of the third sentence the following: ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.

(f) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAYMENTS.—

(1) IN GENERAL.—Such section, as amended by subsection (a), is further amended by adding at the end the following:

''(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The agency head shall ensure that any payment for work in

progress (including materials, labor, and other items) under a contract of an executive agency that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the agency head determines necessary to permit the agency head to carry out the preceding sentence.

"(2) The agency head shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under the contract so long as the agency head has not made the contractual terms, specifications, and price definite.

"(3) This subsection applies to a contract for an amount equal to or greater than the simplified acquisition threshold.

"(g) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to such contractor.

"(2) An agency head receiving a recommendation under paragraph (1) in the case of a contractor's request

for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

"(3) The extent of any reduction or suspension of payments by an agency head under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

"(4) A written justification for each decision of the agency head whether to reduce or suspend payments under paragraph (2), and for each recommendation received by the agency head in connection with such decision, shall be prepared and be retained in the files of the executive agency.

"(5) Each agency head shall prescribe procedures to ensure that, before the agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

"(6) Not later than 180 days after the date on which an agency head reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of the executive agency shall—

''(A) review the determination of fraud on which the reduction or suspension is based; and

''(B) transmit a recommendation to the agency head whether the suspension or reduction should continue.

''(7) Each agency head who receives recommendations made by a remedy coordination official of the executive agency to reduce or suspend payments under paragraph (2) during a fiscal year shall prepare for such year a report that contains the recommendations, the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. Any such report shall be available to any Member of Congress upon request.

''(8) An agency head may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

''(9) In this subsection, the term 'remedy coordination official', with respect to an executive agency, means the person or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.''.

(2) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—The amendments made by paragraph (1) are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law, that relate to progress payment requests, as such procedures are in effect on the date of the enactment of this Act.

(g) CONFORMING AND CLERICAL AMENDMENTS.—

(1) REFERENCE.—Section 305 of the Federal Property and Administrative Services Act of 1949, as amended by subsection (a), is further amended in subsections (d) and (e) by striking out ''subsection (a)'' and inserting in lieu thereof ''subsection (b)''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by striking out the item relating to section 305 and inserting in lieu thereof the following:

''Sec. 305. Contract financing.''.

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2101. ALLOWABLE CONTRACT COSTS.

(a) COMPTROLLER GENERAL EVALUATION.—Section 2324 is amended by striking out subsection (l).

(b) COVERED CONTRACT DEFINED.—Subsection (m) of section 2324 of title 10, United States Code, is amended to read as follows:

''(l)(1) In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by the Department of Defense, except that such term does not include a fixed-price contract without cost incentives.

''(2) Effective on October 1 of each year that is divisible by 5, the amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.''.

SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMERGENCY PERIODS.

(a) REPEAL.—Section 2382 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2382.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2151. ALLOWABLE CONTRACT COSTS.

(a) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256) is amended to read as follows:

''ALLOWABLE COSTS

''SEC. 306. (a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency's supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

''(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the agency head determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the agency head shall assess a penalty against the contractor in an amount equal to—

"(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

"(B) interest (to be computed based on regulations issued by the agency head) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

"(2) If the agency head determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the agency head shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

"(c) WAIVER OF PENALTY.—In accordance with the Federal Acquisition Regulation, the agency head may waive a penalty under subsection (b) in the case of a contractor's proposal for settlement of indirect costs when—

"(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

"(2) the amount of unallowable costs subject to the penalty is insignificant; or

"(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

"(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

"(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

"(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of an agency head under subsection (a) or (b)—

"(1) shall be considered a final decision for the purposes of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and

"(2) is appealable in the manner provided in section 7 of such Act.

"(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:

"(A) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

"(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

"(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or had pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

"(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with the Federal Acquisition Regulation.

"(E) Costs of membership in any social, dining, or country club or organization.

"(F) Costs of alcoholic beverages.

"(G) Contributions or donations, regardless of the recipient.

"(H) Costs of advertising designed to promote the contractor or its products.

"(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

"(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

"(K) Costs incurred in making any payment (commonly known as a 'golden parachute payment') which is—

"(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

"(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

"(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

"(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor

under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined in accordance with the Federal Acquisition Regulation.

"(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country.

"(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

"(2)(A) Subject to the availability of appropriations, the head of an executive agency, in awarding a covered contract, may waive in accordance with the Federal Acquisition Regulation the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the agency head determines that—

"(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;

"(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

"(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

"(B) The head of the executive agency concerned shall include in the solicitation for a covered contract a statement indicating—

"(i) that a waiver has been granted under subparagraph (A) for the contract; or

"(ii) whether the agency head will consider granting such a waiver, and, if the agency head will

consider granting a waiver, the criteria to be used in granting the waiver.

''(C) The agency head shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

''(3) The head of each executive agency shall implement this section with respect to contracts of that executive agency in accordance with the Federal Acquisition Regulation. The provisions of the Federal Acquisition applicable to the implementation of this section may include definitions, exclusions, limitations, and qualifications.

''(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

''(A) Air shows.

''(B) Membership in civic, community, and professional organizations.

''(C) Recruitment.

"(D) Employee morale and welfare.

"(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

"(F) Community relations.

"(G) Dining facilities.

"(H) Professional and consulting services, including legal services.

"(I) Compensation.

"(J) Selling and marketing.

"(K) Travel.

"(L) Public relations.

"(M) Hotel and meal expenses.

"(N) Expense of corporate aircraft.

"(O) Company-furnished automobiles.

"(P) Advertising.

"(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until the contracting officer has obtained—

"(A) adequate documentation with respect to such costs; and

"(B) the opinion of the executive agency's contract auditor on the allowability of such costs.

"(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, an executive agency's contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

"(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of an executive agency's contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

"(g) APPLICABILITY OF REQUIRED REGULATIONS TO SUBCONTRACTORS.—The regulations prescribed to carry out subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.

"(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed by the agency head concerned.

"(2) The agency head concerned may, in an exceptional case, waive the requirement for certification under

paragraph (1) in the case of any contract if the agency head—

"(A) determines in such case that it would be in the interest of the United States to waive such certification; and

"(B) states in writing the reasons for that determination and makes such determination available to the public.

"(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an executive agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18, United States Code, and section 3729 of title 31, United States Code.

"(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the United States is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

"(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).

"(2) A disposition referred to in paragraph (1)(B) is any of the following:

"(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

"(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).

"(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

"(D) A final decision—

"(i) to debar or suspend the contractor,

"(ii) to rescind or void the contract, or

"(iii) to terminate the contract for default, by reason of the violation or failure referred to in paragraph (1).

"(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

"(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

"(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the agency head that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head determines, under regulations prescribed by such agency head, that the costs were incurred as a result

of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency.

"(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

"(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulations.

"(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

"(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged

as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

''(6) In this subsection:

''(A) The term 'proceeding' includes an investigation.

''(B) The term 'costs', with respect to a proceeding—

''(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

''(ii) includes—

''(I) administrative and clerical expenses;

''(II) the cost of legal services, including legal services performed by an employee of the contractor;

''(III) the cost of the services of accountants and consultants retained by the contractor; and

''(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

''(C) The term 'penalty' does not include restitution, reimbursement, or compensatory damages.

''(l) COVERED CONTRACT DEFINED.—(1) In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by an executive agency, except that such term does not include a fixed-price contract without cost incentives.

''(2) Effective on October 1 of each year that is divisible by 5, the amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the item relating to section 306 and inserting in lieu thereof the following:

''Sec. 306. Allowable costs.''.

PART III—ACQUISITIONS GENERALLY

SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS.

Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420) is repealed.

Subtitle C—Audit and Access to Records

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—

(1) IN GENERAL.—Section 2313 of title 10, United States Code, is amended to read as follows:

"§ 2313. Examination of records of contractor

"(a) AGENCY AUTHORITY.—The head of an agency, acting through an authorized representative—

"(1) is entitled to inspect the plant and audit the records of—

"(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

"(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract under a contract referred to in subparagraph (A) or under any combination of such contracts; and

"(2) shall, for the purpose of evaluating the accuracy, completeness, and currency of cost or pricing

data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, have the right to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(b) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

"(c) SUBPOENA POWER.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of records of a contrac-

tor, access to which is provided to the Secretary of Defense or Secretary of a military department by subsection (a).

"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

"(3) The authority provided by paragraph (1) may not be redelegated.

"(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committees on Armed Services of the Senate and House of Representatives.

"(d) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are entitled to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that

the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

"(e) LIMITATION.—The right of the head of an agency under subsection (a), and the right of the Comptroller General under subsection (d), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

"(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:

"(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

"(g) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.".

(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 137 of title 10, United States Code, is amended to read as follows:

"2313. Examination of records of contractor.".

(b) REPEAL OF SUPERSEDED PROVISION.—

(1) REPEAL.—Section 2406 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2406.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—

(1) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1251(a), is further amended by inserting after section 304A the following new section:

''EXAMINATION OF RECORDS OF CONTRACTOR

''SEC. 304B. (a) AGENCY AUTHORITY.—The head of an executive agency, acting through an authorized representative—

''(1) is entitled to inspect the plant and audit the records of—

''(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that executive agency under this title; and

''(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract under a contract referred to in subparagraph (A) or under any combination of such contracts; and

"(2) shall, for the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted pursuant to section 304A with respect to a contract or subcontract, have the right to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(b) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The agency head may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this title in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

"(c) SUBPOENA POWER.—(1) The agency head may require by subpoena the production of records of a contractor, access to which is provided by subsection (a).

"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

"(3) The authority provided by paragraph (1) may not be delegated.

"(4) In the year following a year in which the head of an executive agency exercises the authority provided in paragraph (1), the agency head shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a report on the exercise of such authority during such preceding year and the reasons why such authority was exercised in any instance.

"(d) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are entitled to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontrac-

tor if the agency head concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required.

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(e) LIMITATION.—The right of an agency head under subsection (a), and the right of the Comptroller General under subsection (d), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

"(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:

"(1) CONTRACTS.—For utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

"(g) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.".

(2) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1251(b), is further amended by inserting after the item relating to section 304A the following:

"Sec. 304B. Examination of records of contractor.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended by striking out subsection (c).

Subtitle D—Cost Accounting Standards

SEC. 2301. EXCEPTIONS TO COVERAGE.

Section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by inserting ''(A)'' after ''(2)'';

(2) by striking out '', other than contracts or subcontracts'' and all that follows and inserting in lieu thereof a period; and

(3) by inserting at the end the following:

''(B) Subparagraph (A) does not apply to the following contracts or subcontracts:

''(i) Contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

''(ii) Contracts or subcontracts where the price negotiated is based on prices set by law or regulation.

''(iii) Any other firm fixed-price contract or subcontract for commercial items which is excepted from the requirement to provide cost or pricing data pursuant to subsection (b) or (d) of section 2306a of title 10, United States Code, or subsection (b) or (d) of section 304A of the Federal Property and Administrative Services Act of 1949.

''(C) In this paragraph, the term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor.''.

SEC. 2302. REPEAL OF OBSOLETE DEADLINE REGARDING PROCEDURAL REGULATIONS FOR THE COST ACCOUNTING STANDARDS BOARD.

Section 26(f)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(3)) is amended in the first sentence by striking out ''Not later than 180 days after the date of the enactment of this section, the Administrator'' and inserting in lieu thereof ''The Administrator''.

Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND SHIP SPARE PARTS; QUALITY CONTROL.

(a) REPEAL.—Section 2383 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2383.

SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAPON SYSTEMS.

Section 2403(h) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

''(2) The regulations shall include the following:

''(A) Guidelines for negotiating contractor guarantees that are reasonable and cost effective, as determined on the basis of the likelihood of defects and the estimated cost of correcting such defects.

''(B) Procedures for administering contractor guarantees.

''(C) Guidelines for determining the cases in which it may be appropriate to waive the requirements of this section.''.

PART II—ACQUISITIONS GENERALLY

SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EXPANSION OF AUTHORITY TO PROHIBIT SETOFFS AGAINST ASSIGNEES; REORGANIZATION OF SECTION; REVISION OF OBSOLETE PROVISIONS.

Section 3737 of the Revised Statutes (41 U.S.C. 15) is amended to read as follows:

''SEC. 3737. (a) No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All

rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

"(b) The provisions of subsection (a) shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, provided:

"(1) That, in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment.

"(2) That, unless otherwise expressly permitted by such contract, any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing.

"(3) That, in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of the assignment with—

"(A) the contracting officer or the head of his department or agency;

"(B) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and

"(C) the disbursing officer, if any, designated in such contract to make payment.

"(c) Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section shall constitute a valid assignment for all purposes.

"(d) In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

"(e) Any contract of the Department of Defense, the General Services Administration, the Department of Energy, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, upon a de-

termination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff. Each such determination of need shall be published in the Federal Register.

"(f) If a provision described in subsection (e) or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of—

"(1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract;

"(2) fines;

"(3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract); or

''(4) taxes, social security contributions, or the withholding or non withholding of taxes or social security contributions, whether arising from or independently of such contract.

''(g) Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights of obligations heretofore accrued.''.

SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF CONTRACTS WITH GAO.

Section 3743 of the Revised Statutes (41 U.S.C. 20) is repealed.

Subtitle F—Claims and Disputes

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.

(a) DOD CERTIFICATION REQUIREMENT IN CONFLICT WITH GOVERNMENTWIDE REQUIREMENT.—

(1) INAPPLICABILITY OF REQUIREMENT TO CONTRACT CLAIMS.—Section 2410 of title 10, United States Code, is amended to read as follows:

''§ 2410. Requests for equitable adjustment or other relief: certification

''(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid

unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

"(1) the request is made in good faith, and

"(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2410 and inserting in lieu thereof the following:

"2410. Requests for equitable adjustment or other relief: certification.".

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—Section 2410 of title 10, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

"(1) specifically refers to this subsection; and

''(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.''.

(c) DEFINITION.—Section 2410, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(c) DEFINITION.—In this section, the term 'simplified acquisition threshold' has the meaning given that term in section 2302(4) of this title.''.

(d) REPEAL OF RELATED PROVISIONS.—

(1) CERTIFICATION REGULATIONS FOR CONTRACT CLAIMS EXCEEDING $100,000.—

(A) REPEAL.—Section 2410e of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2410e.

(2) CONFORMING REPEAL.—Section 813(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484, 106 Stat. 2453), is repealed.

SEC. 2502. SHIPBUILDING CLAIMS.

(a) LIMITATION ON PERIOD FOR SUBMISSION.—

(1) INCREASED PERIOD.—Subsection (a) of section 2405 of title 10, United States Code, is amended—

(A) by striking out ''after December 7, 1983,'' and inserting in lieu thereof ''on or after the date of the enactment of the Federal Acquisition Streamlining Act of 1994''; and

(B) by striking out ''18 months'' and inserting in lieu thereof ''6 years''.

(2) SAVINGS PROVISION.—Notwithstanding the 6-year period provided in subsection (a) of section 2405 of title 10, United States Code, as amended by paragraph (1), the period applicable under such subsection in the case of a shipbuilding contract entered into after December 7, 1983, and before the date of the enactment of the Federal Acquisition Streamlining Act of 1994 shall continue to be 18 months.

(b) RESUBMISSION WITH CORRECTED CERTIFICATION.—Subsection (c) of such section is repealed.

PART II—ACQUISITIONS GENERALLY

SEC. 2551. CLAIMS JURISDICTION OF UNITED STATES DISTRICT COURTS AND THE UNITED STATES COURT OF FEDERAL CLAIMS.

(a) CONCURRENT JURISDICTION OF UNITED STATES DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.—

Subsection (a) of section 1346 of title 28, United States Code, is amended to read as follows:

"(a)(1) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

"(2)(A) Except as provided in subparagraph (B), the district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

"(B) The district courts shall not have jurisdiction over any civil action or claim against the United States or any Federal entity which relates in any manner to a contract to which the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) applies, including a claim that seeks to establish the existence or nonexistence of such a contract,

seeks to establish that such a contract is void, or seeks to determine and construe the terms of such a contract. The district courts do not have jurisdiction over any civil action or claim described in the preceding sentence pursuant to section 1331, 1334, or 1346(a)(2)(B) of this title, any provision of law giving a Federal entity the right to sue or be sued in its own name, or any other provision of law.''.

(b) JURISDICTION OF THE UNITED STATES COURT OF FEDERAL CLAIMS UNDER THE TUCKER ACT.—Section 1491 of title 28, United States Code, as amended by section 1422, is further amended by inserting after subsection (c) the following:

''(d)(1) The United States Court of Federal Claims shall have jurisdiction over any civil action or claim against the United States which relates in any manner to a contract to which the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq,) applies, including a civil action or claim that seeks to establish the existence or nonexistence of such a contract, seeks to establish that such contract is void, or seeks to determine and construe the terms of any such contract.

''(2) The jurisdiction of the United States Court of Federal Claims is, pursuant to section 1346(a)(2)(B) of this title, exclusive as to the district courts of the United States.''.

SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.

(a) PERIOD FOR FILING CLAIMS.—

(1) SIX-YEAR LIMITATION.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended in subsection (a) by inserting after the second sentence the following: ''Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the occurrence of the event or events giving rise to the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud.''.

(2) LIMITATION ON APPLICABILITY TO EXISTING CONTRACTS.—Notwithstanding the third sentence of section 6(a) of the Contract Disputes Act of 1978, as added by paragraph (1), if a contract in existence on the date of the enactment of this Act requires that a claim referred to in that sentence be submitted earlier than 6 years after the occurrence of the event or events giving rise to the claim, then the claim shall be submitted within the period required by the contract. The preceding sentence does not apply to a claim by the Federal Government against a contrac-

tor that is based on a claim by the contractor involving fraud.

(b) INCREASED THRESHOLD FOR CERTIFICATION, DECISION, AND NOTIFICATION REQUIREMENTS.—Subsection (c) of such section is amended by striking out ''$50,000'' each place it appears and inserting in lieu thereof ''$100,000''.

(c) INCREASED MAXIMUM FOR APPLICABILITY OF ACCELERATED PROCEDURES.—Section 8(f) of the Contract Disputes Act of 1978 (41 U.S.C. 607(f)) is amended by striking out ''$50,000'' in the first sentence and inserting in lieu thereof ''$150,000''.

(d) INCREASED MAXIMUM FOR APPLICABILITY OF SMALL CLAIMS PROCEDURE.—Section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended by striking out ''$10,000'' in the first sentence and inserting in lieu thereof ''$50,000''.

(e) REDUCED PERIOD FOR FILING ACTION IN COURT OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41 U.S.C. 609(a)(3)) is amended by striking out ''twelve months'' and inserting in lieu thereof ''90 days''.

SEC. 2553. EXTENSION OF ALTERNATIVE DISPUTE RESOLUTION AUTHORITY.

Section 6(e) of the Contracts Disputes Act of 1978 (41 U.S.C. 605(e)) is amended by striking out ''October 1, 1995'' and inserting in lieu thereof ''October 1, 1999''.

SEC. 2554. EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION COMPLAINTS.

(a) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall include provisions that require a contracting officer—

(1) to make every reasonable effort to respond in writing within 30 days to any written request for a contracting officer's decision with respect to a matter relating to the administration of a contract that is received from a small business concern; and

(2) in the event that the contracting officer is unable to render a decision within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to reach a decision.

(b) RULE OF CONSTRUCTION.—Nothing in this provision shall be considered as creating any rights under the Contract Disputes Act (41 U.S.C. 601 et seq.).

(c) DEFINITION.—In this section, the term ''small business concern'' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15

U.S.C. 632(a)) and the regulations promulgated pursuant to that section.

TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTIMATES AND MANPOWER ESTIMATES BEFORE DEVELOPMENT OR PRODUCTION.

(a) CONTENT AND SUBMISSION OF ESTIMATES.—Section 2434 of title 10, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following:

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

"(1) that the independent estimate of the cost of a program—

"(A) be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and

''(B) include all costs of development, procurement, and operations and support, without regard to funding source or management control; and

''(2) that the manpower estimate include the total personnel required to train for, operate, maintain, and support the program upon full operational deployment.''.

(b) TERMINOLOGY CORRECTION.—Subsection (a) of such section is amended by striking out ''full-scale engineering development'' and inserting in lieu thereof ''engineering and manufacturing development''.

SEC. 3002. ENHANCED PROGRAM STABILITY.

(a) BASELINE DESCRIPTIONS AND DEVIATION REPORTING.—Section 2435 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out paragraph (2); and

(B) in paragraph (1)—

(i) by striking out ''(1)''; and

(ii) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing—

"(1) the content of baseline descriptions, which shall include the program cost, the program schedule, and a program performance description;

"(2) the submission of reports on deviations of a program from the baseline description by the program manager to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Technology;

"(3) procedures for review of deviation reports within the Department of Defense; and

"(4) procedures for submission and approval of revised baseline descriptions.

"(c) BASELINE DESCRIPTION REQUIRED BEFORE OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), no amount appropriated or otherwise made available to the Department of Defense may be obligated for a major defense acquisition program before a baseline description for the program is approved in accordance with the procedures prescribed pursuant to subsection (b)(4).

"(2) An obligation otherwise prohibited by paragraph (1) may be incurred if approved in advance by the Under Secretary of Defense for Acquisition and Technology.".

(b) TERMINOLOGY CORRECTION.—Subsection (a)(1) of such section, as redesignated by subsection (a)(1)(B)(ii), is amended by striking out ''full-scale engineering development'' and inserting in lieu thereof ''engineering and manufacturing development''.

SEC. 3003. REPEAL OF REQUIREMENT TO DESIGNATE CERTAIN MAJOR DEFENSE ACQUISITION PROGRAMS AS DEFENSE ENTERPRISE PROGRAMS.

Section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2430 note) is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE PROTOTYPING IN MAJOR PROGRAMS.

(a) REPEAL.—Section 2438 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2438.

SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE ALTERNATIVE SOURCES IN MAJOR PROGRAMS.

(a) REPEAL.—Section 2439 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2439.

Subtitle B—Testing Statutes

SEC. 3011. DIRECTOR OF OPERATIONAL TEST AND EVALUATION TO REPORT DIRECTLY TO SECRETARY OF DEFENSE.

Section 139(c) of title 10, United States Code, is amended by inserting after ''(c)'' the following: ''The Director reports directly, without intervening review or approval, to the Secretary of Defense and Deputy Secretary of Defense personally.''.

SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION FOR LIVE FIRE TESTING.

(a) CONDUCT OF LIVE FIRE TESTING.—Subsection (b) of section 139 of title 10, United States Code, is amended—

(1) by striking out ''and'' at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof ''; and''; and

(3) by adding at the end the following new paragraph:

''(6) conduct the live fire testing activities of the Department of Defense provided for under section 2366 of this title.''.

(b) ANNUAL REPORT ON LIVE FIRE TESTING.—Subsection (f) of such section is amended by inserting ''(including live fire testing activities)'' in the first sentence after ''operational test and evaluation activities''.

SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF ANNUAL REPORT ON OPERATIONAL TEST AND EVALUATION.

Section 139(f) of title 10, United States Code, is amended by inserting after the second sentence the following new sentence: ''If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.''.

Subtitle C—Service Specific Laws

SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CERTAIN RESERVE COMPONENTS.

Section 279 of title 10, United States Code, is amended—

(1) by striking out ''Notwithstanding'' and inserting in lieu thereof ''(a) ACCEPTANCE BY SEC-

RETARY OF A MILITARY DEPARTMENT.—Notwithstanding''; and

(2) by adding at the end the following new subsection:

''(b) ACCEPTANCE BY SECRETARY OF DEFENSE.—Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.''.

SEC. 3022. AUTHORITY TO RENT SAMPLES, DRAWINGS, AND OTHER INFORMATION TO OTHERS.

Subchapter V of chapter 148 of title 10, United States Code, is amended in section 2541(a) by inserting ''rent,'' after ''sell,'' each place it appears in paragraphs (1) and (2).

SEC. 3023. CIVIL RESERVE AIR FLEET.

(a) DEFINITIONS.—Section 9511 of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting '''civil aircraft','' after '''person','';

(B) by striking out ''meaning'' and inserting in lieu thereof ''meanings''; and

(C) by striking out ''(49 U.S.C. 1301)'' and inserting in lieu thereof ''(49 U.S.C. App. 1301)'';

(2) in paragraph (2), by striking out ''passenger-cargo'' and inserting in lieu thereof ''passenger cargo'';

(3) in paragraph (3), by striking out ''cargo-capable'' and inserting in lieu thereof ''cargo capable'';

(4) by striking out paragraph (5) and inserting in lieu thereof the following:

''(5) The term 'cargo convertible aircraft' means a passenger aircraft equipped or designed so that all or substantially all of the main deck of the aircraft can be readily converted for the carriage of property or mail.'';

(5) by striking out paragraph (6);

(6) by redesignating paragraph (7) as paragraph (6);

(7) by redesignating paragraph (8) as paragraph (7) and—

(A) in subparagraph (A) of such paragraph, by inserting ''under section 9512 of this title'' after ''and who contracts with the Secretary'';

(B) by striking out ''or'' at the end of such subparagraph (A); and

(C) by inserting before the period at the end of such paragraph the following: ''; or (C) who owns or controls existing aircraft, or will own or control new aircraft, and who contractually commits all or some of such aircraft to the Civil Reserve Air Fleet'';

(8) by redesignating paragraphs (9), (10), (11), and (12) as paragraphs (8), (9), (10), and (11), respectively; and

(9) in paragraph (11), as so redesignated—

(A) by striking out ''interoperability'' and inserting in lieu thereof ''compatibility''; and

(B) by striking out ''a cargo-convertible, cargo-capable, or passenger-cargo combined aircraft'' and inserting in lieu thereof ''an aeromedical aircraft or a cargo convertible, cargo capable, or passenger cargo combined aircraft''.

(b) CONSOLIDATION OF PROVISIONS RELATING TO CONTRACTUAL COMMITMENT OF AIRCRAFT.—Chapter 931 of such title is amended—

(1) by redesignating subsections (b) and (c) of section 9512 as subsections (c) and (d), respectively;

(2) by redesignating subsection (a) of section 9513 as subsection (b), transferring such subsection

(as so redesignated) to section 9512, and inserting such subsection after subsection (a);

(3) by redesignating subsection (b) of section 9513 as subsection (e) and transferring such subsection (as so redesignated) to the end of section 9512;

(4) in subsection (c) of section 9512, as redesignated by paragraph (1), by striking out ''the terms required by section 9513 of this title and'';

(5) in subsection (e) of section 9512, as redesignated and transferred to such section by paragraph (3), by striking out ''under section 9512 of this title'' and inserting in lieu thereof ''entered into under this section''; and

(6) by striking out the heading of section 9513.

(c) USE OF MILITARY INSTALLATIONS BY CONTRACTORS.—

(1) AUTHORITY.—Such chapter, as amended by subsection (b), is further amended by adding at the end the following new section 9513:

''§ 9513. Use of military installations by Civil Reserve Air Fleet contractors

''(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—

''(A) may, by contract entered into with any contractor, authorize such contractor to use one or

more Air Force installations designated by the Secretary; and

"(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.

"(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.

"(b) PURPOSES OF USE.—A contract entered into under subsection (a) may authorize use of a designated installation as a weather alternate, a service stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation within the United States, for other commercial purposes. Notwithstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations for commercial operations not required by the Department of Defense and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.

"(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding any other provision of law, amounts collected from

the contractor for landing fees, services, supplies, or other charges authorized to be collected under the contract shall be credited to the appropriations of the armed forces having jurisdiction over the military installation to which the contract pertains. Amounts so credited to an appropriation shall be available for obligation for the same period as the appropriation to which credited.

''(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the United States from all actions, suits, or claims of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.

''(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary or, in the case of an installation under the jurisdiction of an armed force other than the Air Force, the Secretary concerned may at any time and without prior notice deny access to an installation designated under the contract if military exigencies require such action.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by

striking out the item relating to section 9513 and inserting in lieu thereof the following:

''9513. Use of military installations by Civil Reserve Air Fleet contractors.''.

SEC. 3024. EXCHANGE OF PERSONNEL.

(a) EXCHANGE AUTHORITY.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2350k. Exchange of personnel

''(a) INTERNATIONAL EXCHANGE AGREEMENTS AUTHORIZED.—Under regulations prescribed by the Secretary of Defense, the Secretary and the secretaries of the military departments are each authorized to enter into agreements with the governments of foreign countries for the exchange of military and civilian personnel of the Department of Defense and military and civilian personnel of the defense departments or ministries of such foreign governments.

''(b) ASSIGNMENT OF PERSONNEL.—Pursuant to such agreements, personnel of the foreign defense departments or ministries may be assigned to positions in the Department of Defense, and personnel of the Department of Defense may be assigned to positions in foreign defense departments or ministries. Agreements for the exchange of personnel engaged in research and development activities may provide for assignments to positions in private industry that support the defense departments or ministries. The specific positions and the individuals to be assigned must be accept-

able to both the sending government and the host government.

"(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—Each government shall be required under an agreement authorized by subsection (a) to provide personnel having qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

"(d) PAYMENT OF PERSONNEL COSTS.—Each government shall pay the salary, per diem, cost of living, travel, cost of language or other training, and other costs (except for cost of temporary duty directed by the host government and costs incident to the use of host government facilities in the performance of assigned duties) for its own personnel in accordance with the laws and regulations of such government that pertain to such matters.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by adding at the end the following new item:

"2350k. Exchange of personnel.".

SEC. 3025. SCIENTIFIC INVESTIGATION AND RESEARCH FOR THE NAVY.

(a) REPEAL.—Section 7203 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7203.

SEC. 3026. CONSTRUCTION OF COMBATANT AND ESCORT VESSELS AND ASSIGNMENT OF VESSEL PROJECTS.

(a) REPEAL OF OBSOLETE AND INTERNALLY INCONSISTENT PROVISIONS.—Section 7299a of title 10, United States Code, is amended—

(1) by striking out subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(b) CONFORMING AMENDMENT.—Subsection (b) of such section, as redesignated by subsection (a)(2), is amended in paragraph (2) by striking out ''subsection (a) or''.

SEC. 3027. REPEAL OF REQUIREMENT FOR CONSTRUCTION OF VESSELS ON PACIFIC COAST.

(a) REPEAL.—Section 7302 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7302.

SEC. 3028. AUTHORITY TO TRANSFER BY GIFT A VESSEL STRICKEN FROM NAVAL VESSEL REGISTER.

Section 7306(a)(1) of title 10, United States Code, is amended by inserting ''Territory,'' after ''State,''.

SEC. 3029. NAVAL SALVAGE FACILITIES.

Chapter 637 of title 10, United States Code, is amended—

(1) in section 7361—

(A) in subsection (a), by inserting ''AUTHORITY TO PROVIDE FACILITIES BY CONTRACT OR OTHERWISE.—'' after ''(a)'';

(B) in subsection (b), by inserting ''CONTRACTS AFFECTING THE DEPARTMENT OF TRANSPORTATION.—'' after ''(b)''; and

(C) by striking out subsection (c) and inserting in lieu thereof the following new subsection (c):

''(c) LIMITATION ON TERM CONTRACTS.—Term contracts may be entered into for purposes of this section only after—

''(1) it has been demonstrated to the satisfaction of the Secretary of the Navy that available commercial salvage facilities are inadequate to meet national defense requirements; and

''(2) the Secretary of the Navy determines that adequate public notice of intent to exercise the authority under this subsection has been provided.'';

(2) by designating the text of section 7362 as subsection (d) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(3) in subsection (d) of section 7361 of such title, as so designated and transferred, by inserting before ''The Secretary'' the following: ''COMMERCIAL USE OF NAVAL VESSELS AND EQUIPMENT.—'';

(4) by designating the text of section 7363 as subsection (e) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(5) in subsection (e) of section 7361 of such title, as so designated and transferred, by inserting before ''Before any salvage vessel'' the following: ''CONDITIONS FOR TRANSFER OF EQUIPMENT.—'';

(6) by designating the text of section 7365 as subsection (f) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(7) in subsection (f) of section 7361 of such title, as so designated and transferred, by inserting before

''The Secretary'' the following: ''SETTLEMENT OF CLAIMS.—'';

(8) by designating the text of section 7367 as subsection (g) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(9) in subsection (g) of section 7361 of such title, as so designated and transferred—

(A) by inserting before ''Money received'' the following: ''DISPOSITION OF RECEIPTS.—''; *and*

(B) by striking out ''this chapter'' in the first sentence and inserting in lieu thereof ''this section'';

(10) by striking out the section headings for sections 7362, 7363, 7365, and 7367;

(11) by striking out the heading for section 7361 and inserting in lieu thereof the following:

''§ 7361. Navy support for salvage operations'';

and

(12) in the table of sections at the beginning of such chapter—

(A) by striking out the item relating to section 7361 and inserting in lieu thereof the following:

''7361. Navy support for salvage operations.'';

and

(B) by striking out the items relating to sections 7362, 7363, 7365, and 7367.

Subtitle D—Department of Defense Commercial and Industrial Activities

SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.

(a) CONSOLIDATION AND REVISION OF AUTHORITY.—

(1) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code is amended by adding at the end the following:

"§ 2542. Factories and arsenals: manufacture at

"(a) The Secretary of Defense or the Secretary of a military department may have supplies needed for the Department of Defense or such military department, as the case may be, made in factories or arsenals owned by the United States.

"(b) The Secretary of Defense or the Secretary of the military department concerned may abolish any United States arsenal that such Secretary considers unnecessary.".

(2) TECHNICAL AMENDMENT.—The table of sections at the beginning of subchapter V of such chapter is amended by adding at the end the following new item:

"2542. Factories and arsenals: manufacture at.".

(b) REPEAL OF SUPERSEDED AUTHORITY.—

(1) ARMY AUTHORITY.—

(A) REPEAL.—Section 4532 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4532.

(2) AIR FORCE AUTHORITY.—

(A) REPEAL.—Section 9532 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9532.

SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED ADVISORY AND ASSISTANCE SERVICES.

(a) FUNDING TO BE IDENTIFIED IN BUDGET.—Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) The Director of the Office of Management and Budget shall establish the funding for advisory and assistance services for each department and agency as a separate object class in each budget annually submitted to the Congress under this section.

''(2)(A) In paragraph (1), except as provided in subparagraph (B), the term 'advisory and assistance services' means the following services when provided by nongovernmental sources:

''(i) Management and professional support services.

''(ii) Studies, analyses, and evaluations.

''(iii) Engineering and technical services.

''(B) In paragraph (1), the term 'advisory and assistance services' does not include the following services:

''(i) Routine automated data processing and telecommunications services (as defined in the Federal Information Resources Management Regulation prescribed by the Administrator of General Services) unless such services are an integral part of a contract for the procurement of advisory and assistance services.

''(ii) Architectural and engineering services.

''(iii) Technical support of research and development activities.

''(iv) Research on basic mathematics or medical, biological, physical, social, psychological, or other phenomena.''.

(b) REPEAL OF SOURCE LAW.—Section 512 of Public Law 102–394 (106 Stat. 1826) is repealed.

(c) REPEAL OF SUPERSEDED PROVISIONS.—

(1) TITLE 10.—

(A) REPEAL.—Section 2212 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by striking out the item relating to section 2212.

(2) TITLE 31.—

(A) REPEAL.—Section 1114 of title 31, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of such title is amended by striking out the item relating to section 1114.

Subtitle E—Fuel- and Energy-Related Laws

SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS FOR STORAGE, HANDLING, OR DISTRIBUTION.

Section 2388(a) of title 10, United States Code, is amended by striking out ''liquid fuels and natural gas'' and inserting in lieu thereof ''liquid fuels or natural gas''.

Subtitle F—Fiscal Statutes

SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DEPARTMENT TO COVER OBLIGATIONS OF ANOTHER AGENCY OF DEPARTMENT OF DEFENSE.

Subsection (c)(2) of section 3321 of title 31, United States Code, is amended by striking out ''military departments of the'' and inserting in lieu thereof ''The''.

Subtitle G—Miscellaneous

SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.

Section 2202 of title 10, United States Code, is amended to read as follows:

''§ 2202. Obligation of funds: limitation

''The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.''.

SEC. 3082. REPEAL OF REQUIREMENTS REGARDING PRODUCT EVALUATION ACTIVITIES.

(a) REPEAL.—Section 2369 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item related to section 2369.

SEC. 3083. CODIFICATION AND REVISION OF LIMITATION ON LEASE OF VESSELS, AIRCRAFT, AND VEHICLES.

(a) LIMITATION.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2410l. Lease of vessels, aircraft, and vehicles

''The head of an agency named in paragraph (1), (2), (3), or (4) of section 2303(a) of this title may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement without previously having considered all costs of such lease (including estimated termination liability) and determined in writing that such lease is in the best interest of the Government.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

''2410l. Lease of vessels, aircraft, and vehicles.''.

(b) REPEAL OF SUPERSEDED PROVISION.—Section 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C. 2401 note) is repealed.

SEC. 3084. SOFT DRINK SUPPLIES FOR EXCHANGE STORES.

Section 2424 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c) Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the procurement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular drink is a soft drink and whether the drink was manufactured in the United States.''.

SEC. 3085. REPEAL OF PREFERENCE FOR RECYCLED TONER CARTRIDGES.

The following provisions of law, relating to a preference for procurement of recycled toner cartridges, are repealed:

(1) Section 630 of Public Law 102–393 (106 Stat. 1773) and the provision of law set out in quotes in that section (42 U.S.C. 6962(j)).

(2) Section 401 of Public Law 103–123 (107 Stat. 1238).

TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS

Subtitle A—Simplified Acquisition Threshold

PART I—ESTABLISHMENT OF THRESHOLD

SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.

(a) TERM DEFINED.—Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) is amended to read as follows:

''(11) The term 'simplified acquisition threshold' means $100,000.''.

(b) INTERIM REPORTING RULE.—Until October 1, 1999, procuring activities shall continue to report procurement awards with a dollar value of at least $25,000, but less than $100,000, in conformity with the procedures for the reporting of a contract award in excess of $25,000 that were in effect on October 1, 1992.

PART II—SIMPLIFICATION OF PROCEDURES

SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

''SIMPLIFIED ACQUISITION PROCEDURES

''SEC. 29. (a) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not in excess of the simplified acquisition threshold.

''(b) Regulations prescribed pursuant to subsection (a) shall include the following provisions:

''(1) A provision that a contract with an anticipated value not in excess of $2,500 is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and section 2 of title III of the Act of March 3, 1933 (commonly known as the 'Buy America Act') (41 U.S.C. 10a et seq.).

''(2) A provision that a civilian or military official, or employee of an agency, whose contracting authority does not exceed $2,500 is not a procurement official for the purposes of section 27 of this Act.

''(3) A provision that a purchase not in excess of $2,500 may be made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable.

''(4) A requirement that purchases not in excess of $2,500 be distributed equitably among qualified suppliers.

''(c) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a).

''(d) In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.''.

SEC. 4012. SMALL BUSINESS RESERVATION.

Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended to read as follows:

''(j)(1) Each contract for the purchase of goods and services that has an anticipated value in excess of $2,500 but not in excess of the simplified acquisition threshold and that is subject to simplified acquisition procedures prescribed pursuant to section 29 of the Office of Federal Procurement Policy Act shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

''(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

''(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not in excess of the simplified acquisition threshold under the authority of section 8(a) of this Act, section 2323 of title 10, United States Code, or section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note).''.

SEC. 4013. FAST PAYMENT UNDER SIMPLIFIED ACQUISITION PROCEDURES.

(a) PAYMENT PROCEDURES.—The simplified acquisition procedures described in section 29(a) of the Office of Federal Procurement Policy Act (as added by section 4011) shall provide for use of the payment terms described in subsection (b), and for the disbursement of payment through electronic fund transfer, whenever circumstances permit.

(b) REQUIRED PAYMENT TERMS.—The payment terms for a purchase made pursuant to simplified acquisition procedures shall require payment, in accordance with the provisions of chapter 39 of title 31, United States Code, within 15 days after the date of the receipt of a proper invoice for products delivered or services performed, if—

(1) in the case of a purchase of property, title to the property will vest in the Government upon delivery of the property to the Government or to a common carrier; and

(2) in the case of property or services for which payment is due before the Government's acceptance of the property or services, the vendor provides commercial or other appropriate warranties assuring that the property or services purchased conform to the requirements set forth in the Government's purchase offer.

SEC. 4014. PROCUREMENT NOTICE.

(a) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (a) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—

(1) in paragraph (1), by striking out ''the small purchase threshold'' each place it appears and inserting in lieu thereof ''$25,000''; and

(2) in paragraph (3)(B), by inserting after ''(B)'' the following: ''in the case of a contract or order expected to exceed the simplified acquisition threshold,''.

(b) CONTENT OF NOTICE.—Subsection (b) of such section is amended—

(1) by striking out ''and'' at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

''(6) in the case of a contract in an amount estimated to exceed $25,000 but not to exceed the simplified acquisition threshold—

''(A) a description of the procedures to be used in awarding the contract; and

''(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.''.

(c) NOTICE UNDER THE SMALL BUSINESS ACT.—

(1) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (e) of section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(A) in paragraph (1), by striking out ''the small purchase threshold'' each place it appears and inserting in lieu thereof ''$25,000''; and

(B) in paragraph (3)(B), by inserting after ''(B)'' the following: ''in the case of a contract or order estimated to exceed the simplified acquisition threshold,''.

(2) CONTENT OF NOTICE.—Subsection (f) of such section is amended—

(A) by striking out ''and'' at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following:

''(6) in the case of a contract in an amount estimated to exceed the $25,000 but not to exceed the simplified acquisition threshold—

''(A) a description of the procedures to be used in awarding the contract; and

''(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.''.

SEC. 4015. ELECTRONIC COMMERCE FOR FEDERAL GOVERNMENT PROCUREMENTS.

(a) DEVELOPMENT AND IMPLEMENTATION OF SYSTEM.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal Government agencies having applicable technical and functional expertise, may take appropriate steps to develop and implement a Federal Governmentwide architecture or de-

sign for electronic commerce that provides interoperability among users.

(b) REQUIRED CAPABILITIES.—The requirements analysis prepared to implement the architecture or design of a system of electronic commerce referred to in subsection (a) shall have the following capabilities:

(1) The maximum practicable capability for electronic exchange of such procurement information as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents between the private sector and the Federal Government.

(2) Capabilities that increase the access of businesses, including small business concerns, socially and economically disadvantaged small business concerns, and businesses owned predominantly by women, to Federal Government procurement opportunities.

(3) Easy access for potential Federal Government contractors.

(4) Use of nationally and internationally recognized data formats that broaden and ease electronic interchange of data.

(5) Use of Federal Government systems and networks and industry systems and networks.

(c) NOTICE AND SOLICITATION REGULATIONS.—In connection with implementation of the architecture or de-

sign referred to in subsection (a), the Federal Acquisition Regulatory Council shall ensure that the Federal Acquisition Regulation contains appropriate notice and solicitation provisions applicable to acquisitions conducted through such architecture or design. The provisions shall specify the required form and content of notices of acquisitions and the minimum periods for notifications and solicitations. Each minimum period specified for a notification or solicitation shall afford potential offerors a reasonable opportunity to respond to the notification or solicitation, as the case may be.

(d) LIMITATION OF PUBLICATION REQUIREMENT.—The requirement in section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) for publishing notice of a solicitation in the Commerce Business Daily shall not apply to acquisitions of a Federal agency or a component of a Federal agency that are made through electronic commerce and have a value not in excess of the simplified acquisition threshold if the Administrator for Federal Procurement Policy certifies that such agency or component—

(1) has fully implemented the architecture or design referred to in subsection (a); and

(2) has procedures in place—

(A) to provide notice to potential offerors in accordance with the requirements of the Federal Acquisition Regulation prescribed pursuant to subsection (c); and

(B) to ensure that small business concerns are afforded an opportunity to respond to a solicitation of contract offers within the period specified in the solicitation.

(e) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given that term is section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

PART III—APPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

SEC. 4021. FUTURE ENACTED PROCUREMENT LAWS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4011, is further amended by adding at the end the following new section:

''APPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

''SEC. 30. (a) IN GENERAL.—The applicability of a provision of law described in subsection (b) to contracts not in excess of the simplified acquisition threshold may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law

that expressly refers to this section and prohibits the waiver of that provision of law.

''(b) REFERENCED LAW.—A provision of law referred to in subsection (a) is any provision of law enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 that, as determined by the Administrator for Federal Procurement Policy, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government.''.

SEC. 4022. ARMED SERVICES ACQUISITIONS.

(a) REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, is amended by adding at the end the following: ''This subsection does not apply to a contract that is not in excess of the simplified acquisition threshold.''.

(b) PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 2402 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c) This section does not apply to a contract that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(c) AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.—Section 2313 of title 10, United States

Code, as amended by section 2201, is further amended by adding at the end of subsection (f) the following:

''(2) A contract that is not in excess of the simplified acquisition threshold.''.

(d) REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Section 2384(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that does not exceed the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(e) PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, is amended in the second sentence by striking out ''above'' and all that follows and inserting in lieu thereof ''in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(f) PROHIBITION ON PERSONS CONVICTED OF DEFENSE-CONTRACT RELATED FELONIES.—Section 2408(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) The prohibition in paragraph (1) does not apply with respect to the following:

''(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (11))).

''(B) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A).''.

SEC. 4023. CIVILIAN AGENCY ACQUISITIONS.

(a) REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) is amended by adding at the end the following: ''The preceding sentence does not apply to a contract that is not in excess of the simplified acquisition threshold.''.

(b) PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g) is amended by adding at the end the following new subsection:

''(c) This section does not apply to a contract that is not in excess of the simplified acquisition threshold.''.

(c) AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.—Section 304B of the Federal Property and Administrative Services Act of 1949, as added by section 2251(a), is amended by adding at the end of subsection (f) the following:

''(2) A contract that is not in excess of the simplified acquisition threshold.''.

SEC. 4024. ACQUISITIONS GENERALLY.

(a) LIMITATION ON USE OF FUNDS TO INFLUENCE CERTAIN FEDERAL ACTIONS.—Section 1352(e)(2)(B) of title 31, United States Code, is amended by striking out ''$100,000'' and inserting in lieu thereof ''the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

(b) REQUIREMENT FOR CONTRACT CLAUSE RELATING TO KICKBACKS.—Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57) is amended by adding at the end the following new subsection:

''(d) Subsections (a) and (b) do not apply to a prime contract that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(c) MILLER ACT.—

(1) IN GENERAL.—

(A) CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD.—The Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the ''Miller Act'', is amended by adding at the end the following new section:

''SEC. 5. This Act does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(B) CONFORMING AMENDMENT.—Subsection (a) of the first section of such Act is amended by striking out '', exceeding $25,000 in amount,''.

(2) ALTERNATIVE PAYMENT PROTECTIONS.—

(A) PROTECTIONS TO BE SPECIFIED IN THE FAR.—The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in subparagraph (C).

(B) USE OF AUTHORIZED PROTECTIONS.—The contracting officer for a contract shall—

(i) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subpara-

graph (A), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for such contract; and

(ii) specify in the solicitation of offers for such contract the payment protection or protections so selected.

(C) COVERED CONTRACTS.—

(i) APPLICABILITY.—The regulations required under subparagraph (A) and the requirements of subparagraph (B) apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act that are in excess of $25,000 but not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(ii) MILLER ACT REFERENCE.—The Miller Act referred to in subparagraph (A) is the Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the ''Miller Act''.

(d) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—

(1) IN GENERAL.—Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 329) is amended by adding at the end the following new subsection:

''(c) This title does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

(2) CONFORMING AMENDMENT.—Section 107(a) of such Act (40 U.S.C. 333(a)) is amended by inserting after ''It shall be a condition of each contract'' the following: ''(other than a contract referred to in section 103(c))''.

(e) DRUG-FREE WORKPLACE ACT OF 1988.—Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of the Anti-Drug Abuse Act of 1988; Public Law 100–690; 41 U.S.C. 701(a)(1)) is amended by striking out ''of $25,000 or more from any Federal agency'' and inserting in lieu thereof ''in excess of the simplified acquisition threshold (as defined in section 4(11) of such Act (41 U.S.C. 403(11))) by any Federal agency''.

(f) CERTAIN PROCUREMENT INTEGRITY REQUIREMENTS.—

(1) CERTIFICATION REQUIREMENT.—Subsection (e)(7)(A) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by striking out ''$100,000'' and inserting in lieu thereof ''the simplified acquisition threshold''.

(2) CONTRACT CLAUSE REQUIREMENT.—Subsection (g)(1) of such section is amended by inserting after ''awarded by a Federal agency'' the following: ''(other than a contract in an amount that is not in excess of the simplified acquisition threshold)''.

(g) SOLID WASTE DISPOSAL ACT.—Section 6002(a) of the Solid Waste Disposal Act (42 U.S.C. 6962(a)) is amended by striking out all that follows ''with respect to any'' and inserting in lieu thereof ''contract in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).''.

PART IV—CONFORMING AMENDMENTS

SEC. 4071. ARMED SERVICES ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section 2304(g) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out ''small purchases of property and services'' and inserting in lieu thereof ''purchases of property and services not in excess of the simplified acquisition threshold'';

(2) by striking out paragraph (2);

(3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(4) in paragraph (2), as so redesignated—

(A) by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''; and

(B) by striking out ''small purchase procedures'' and inserting in lieu thereof ''simplified procedures''; and

(5) in paragraph (3), as redesignated by paragraph (3), by striking out ''small purchase procedures'' and inserting in lieu thereof ''the simplified procedures''.

(b) SOLICITATION CONTENT REQUIREMENT.—Section 2305(a)(2) of title 10, United States Code, is amended by striking out ''small purchases)'' in the matter above subparagraph (A) and inserting in lieu thereof ''purchases not in excess of the simplified acquisition threshold)''.

(c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A) of title 10, United States Code, is amended by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''.

SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) PROPERTY AND SERVICES GENERALLY.—Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended—

(A) in paragraph (1), by striking out ''small purchases of property and services'' and inserting in lieu thereof ''purchases of property and services not in excess of the simplified acquisition threshold'';

(B) by striking out paragraphs (2) and (5);

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(D) in paragraph (2), as so redesignated—

(i) by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''; and

(ii) by striking out ''small purchase procedures'' and inserting in lieu thereof ''simplified procedures''; and

(E) in paragraph (3), as redesignated by subparagraph (C), by striking out ''small purchase procedures'' and inserting in lieu thereof ''the simplified procedures''.

(2) LEASEHOLDS.—Section 210 of the Federal Property and Administrative Services Act of 1949 (40

U.S.C. 490) is amended by adding at the end the following new subsection:

''(k)(1) Regulations prescribed by the Administrator shall provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

''(2) For purposes of paragraph (1), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

''(3) In this subsection, the term 'simplified acquisition threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).''.

(b) SOLICITATION CONTENT REQUIREMENT.—Section 303A(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(b)) is amended by striking out ''small purchases)'' in the matter above paragraph (1) and inserting in lieu thereof ''purchases not in excess of the simplified acquisition threshold)''.

(c) COST TYPE CONTRACTS.—Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)), as amended by section 1071, is further amended in the second sentence by striking out ''either

$25,000'' and inserting in lieu thereof ''either the simplified acquisition threshold''.

SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY ACT.

Section 19(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 417(a)) is amended by striking out ''procurements, other than small purchases,'' and inserting in lieu thereof ''procurements in excess of the simplified acquisition threshold''.

SEC. 4074. SMALL BUSINESS ACT.

(a) DEFINITION.—Section 3(m) of the Small Business Act (15 U.S.C. 632(m)) is amended by striking out '' 'small purchase threshold' '' and inserting in lieu thereof '' 'simplified acquisition threshold' ''.

(b) USE OF SIMPLIFIED ACQUISITION THRESHOLD TERM.—Section 8(d)(2)(A) of the Small Business Act (15 U.S.C. 637(d)(2)(A)) is amended by striking out ''small purchase threshold'' and inserting in lieu thereof ''simplified acquisition threshold''.

PART V—REVISION OF REGULATIONS

SEC. 4081. REVISION REQUIRED.

(a) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall review the Federal Acquisition Regula-

tion to identify regulations that are applicable to acquisitions in excess of a specified amount that is less than $100,000. The Council shall amend the regulations so identified as necessary to provide that such regulations do not apply to acquisitions that are not in excess of the simplified acquisition threshold. The preceding sentence does not apply in the case of a regulation for which such an amendment would not be in the national interest, as determined by the Council.

(b) SUPPLEMENTAL REGULATIONS.—The head of each Federal agency that has issued regulations, policies, or procedures referred to in section 25(c)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(2)) shall identify any such regulations, policies, or procedures that are applicable to acquisitions in excess of a specified amount that is less than $100,000. The agency head shall amend the regulations so identified as necessary to provide that such regulations, policies, and procedures do not apply to acquisitions that are not in excess of the simplified acquisition threshold. The preceding sentence does not apply in the case of a regulation, policy, or procedure for which such an amendment would not be in the national interest, as determined by the agency head.

(c) COMPLETION OF ACTIONS.—All actions under this section shall be completed not later than 180 days after the date of the enactment of this Act.

(d) DEFINITIONS.—In this section:

(1) The term ''simplified acquisition threshold'' has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as amended by section 4001.

(2) The term ''Federal agency'' has the meaning given such term in section 3(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 472(b)).

Subtitle B—Socioeconomic and Small Business Laws

SEC. 4101. ARMED SERVICES ACQUISITIONS.

(a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO CONSTRUCTION OF NAVAL VESSELS.—Section 7299 of title 10, United States Code, is amended to read as follows: ''No contract for the construction, alteration, furnishing, or equipping of a naval vessel shall be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to as the 'Davis-Bacon Act', or to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the President determines that such requirement is in the interest of national defense.''.

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

"§ 7299. Contracts: applicability of certain labor laws".

(2) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of chapter 633 of title 10, United States Code, is amended to read as follows:

''7299. Contracts: applicability of certain labor laws.''.

SEC. 4102. ACQUISITIONS GENERALLY.

(a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO CONSTRUCTION OF VESSELS.—No contract for the construction, alteration, furnishing, or equipping of a vessel shall be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to as the 'Davis-Bacon Act', or to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the President determines that such requirement is in the interest of the United States.

(b) REPEAL OF EXECUTED REPORTING REQUIREMENT.—Section 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2516) is repealed.

(c) WALSH-HEALEY ACT.—

(1) REPEAL OTHER THAN FOR CERTAIN DEFINITIONAL PURPOSES.—The Act of June 30, 1936 (41

U.S.C. 35 et seq.), commonly referred to as the "Walsh-Healey Act", is amended to read as follows:

"SECTION 1. (a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

"(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms 'regular dealer' and 'manufacturer', as defined pursuant to subsection (a)."

(2) CONFORMING AMENDMENT.—Section 2304(h) of title 10, United States Code, is amended to read as follows:

"(h) For the purposes of the Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly re-

ferred to as the 'Davis-Bacon Act') (40 U.S.C. 276a et seq.), purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures.''.

(d) REPEAL OF REDUNDANT REQUIREMENT REGARDING APPLICABILITY OF THE DAVIS-BACON ACT AND THE WALSH-HEALEY ACT.—Section 308 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 258) is repealed.

SEC. 4103. ACQUISITIONS FROM SMALL BUSINESSES.

(a) SET-ASIDE PRIORITY.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by striking out subsections (e) and (f).

(b) CERTIFICATE OF COMPETENCE.—Section 804 of Public Law 103–484 (106 Stat. 2447; 10 U.S.C. 2305 note) is repealed.

SEC. 4104. CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

(a) PROCUREMENT PROCEDURES AUTHORIZED.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended by inserting after subsection (b) the following new subsection:

''(c)(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individ-

uals that is established for a Federal agency pursuant to section 15(g)(1), the head of the agency may enter into contracts using—

"(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of this section; and

"(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

"(2) Paragraph (1) does not apply to the Department of Defense.".

(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall be amended to provide for uniform implementation of the authority provided in section 8(c) of the Small Business Act, as added by subsection (a).

(2) MATTERS TO BE ADDRESSED.—The provisions of the Federal Acquisition Regulation prescribed pursuant to paragraph (1) shall include—

(A) conditions for the use of advance payments;

(B) provisions for contract payment terms that provide for—

(i) accelerated payment for work performed during the period for contract performance; and

(ii) full payment for work performed;

(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to section 8(c)(1)(B) of the Small Business Act, as added by subsection (a), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

(D)(i) procedures for a person to request the head of Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain

the goal established for that contracting activity; and

(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

(c) TERMINATION.—Section 8(c) of the Small Business Act, as added by subsection (a), shall cease to be effective at the end of September 30, 1999.

Subtitle C—Miscellaneous Acquisition Laws

SEC. 4151. PROHIBITION ON USE OF FUNDS FOR DOCUMENTING ECONOMIC OR EMPLOYMENT IMPACT OF CERTAIN ACQUISITION PROGRAMS.

(a) REVISION AND CODIFICATION.—

(1) IN GENERAL.—Subchapter I of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

''No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.''.

(b) REPEAL OF SUPERSEDED LAW.—Section 9048 of Public Law 102–396 (106 Stat. 1913) is repealed.

SEC. 4152. RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES FOR PROCUREMENT FROM A PARTICULAR SOURCE.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304 of title 10, United States Code, as amended by section 1005(b), is further amended—

(1) in subsection (c)(5), by inserting ''subject to subsection (j),'' after ''(5)''; and

(2) by adding at the end the following new subsection:

''(j)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.

''(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—

''(A) specifically refers to this subsection;

''(B) specifically identifies the particular non-Federal Government source involved; and

''(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).''.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(1) in subsection (c)(5), by inserting ''subject to subsection (h),'' after ''(5)''; and

(2) by adding at the end the following new subsection:

''(h)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.

''(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—

''(A) specifically refers to this subsection;

''(B) specifically identifies the particular non-Federal Government source involved; and

''(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).''.

TITLE V—ACQUISITION MANAGEMENT

Subtitle A—Armed Services Acquisitions

SEC. 5001. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED MANAGEMENT OF PROGRAMS.—

(1) IN GENERAL.—Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2219. Performance based management: acquisition programs

''(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

"(1) the Department of Defense should achieve, on average, 90 percent of the cost and schedule goals established for the research and development programs and acquisition programs of the Department of Defense without reducing the performance or capabilities of the items being acquired; and

"(2) the average period necessary for converting an emerging technology into initial operational capability for the Department of Defense should not exceed 8 years.

"(b) ESTABLISHMENT OF GOALS.—(1) The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense.

"(2) The Comptroller of the Department of Defense shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

"(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—Whenever it is necessary to do so in order to implement the policy set out in subsection (a), the Secretary of Defense shall—

"(1) identify and consider whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance

with performance or capability requirements taking into consideration—

"(A) the needs of the Department known as of the time of consideration;

"(B) the state of the technology or technologies relevant to the programs and to the needs of the Department;

"(C) the estimated costs and projected schedules necessary for the completion of such programs; and

"(D) other pertinent information; and

"(2) identify existing and potential research and development programs and acquisition programs that are suitable alternatives for programs considered pursuant to paragraph (1).

"(d) ANNUAL REPORTING REQUIREMENT.—The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of the progress made in implementing the policy stated in subsection (a). The Secretary shall use data from existing management systems in making the assessment.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2219. Performance based management: acquisition programs.".

(b) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—Within one year after the date of the enactment of this Act, the Secretary of Defense shall review the incentives and personnel actions available to the Secretary for encouraging excellence in the defense acquisition workforce and provide an enhanced system of incentives for the encouragement of excellence in such workforce. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

(1) relate pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs of the department pursuant to section 2219(b) of title 10, as added by subsection (a)); and

(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs of the department pursuant to section 2219(b) of title 10, United States Code, as added by subsection (a).

(c) RECOMMENDED LEGISLATION.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 2219 of title 10, United States Code, as added by subsection (a), and otherwise to facilitate and enhance management of Department of Defense acquisition programs and the defense acquisition workforce on the basis of performance.

SEC. 5002. RESULTS ORIENTED ACQUISITION PROGRAM CYCLE.

The Secretary of Defense shall define in regulations a simplified acquisition program cycle that is results-oriented. The Secretary shall consider including in the regulations provisions for the following:

(1) Program phases as follows:

(A) An integrated decision team meeting which—

(i) may be requested by a potential user of the system or component to be acquired, the head of a laboratory, or a program office on such bases as the emergence of a new military requirement, cost savings opportunity, or new technology opportunity;

(ii) is conducted by an acquisition program executive officer; and

(iii) is usually completed within 1 to 3 months.

(B) A prototype development and testing phase which—

(i) includes operational tests and concerns relating to manufacturing operations and life cycle support;

(ii) is usually completed within 6 to 36 months; and

(iii) produces sufficient numbers of prototypes to assess operational utility.

(C) Product integration, development, and testing which—

(i) includes full-scale development, operational testing, and integration of components; and

(ii) is usually completed within 1 to 5 years.

(D) Production, integration into existing systems, or production and integration into existing systems.

(2) An acquisition program approval process for major program decisions which consists of the following:

(A) One major decision point—

(i) which occurs for an acquisition program before the program proceeds into product integration and development; and

(ii) at which the Under Secretary of Defense for Acquisition and Technology, in consultation with the Vice Chairman of the Joint Chiefs of Staff reviews the program, determines whether the program should continue to be carried out beyond product integration and development, and decides whether to commit to further development, to require further prototyping, or to terminate the program.

(B) Consideration of the potential benefits, affordability, needs, and risks of an acquisition program in the review of the acquisition program.

SEC. 5003. DEFENSE ACQUISITION PILOT PROGRAM DESIGNATIONS.

(a) PROGRAMS AND WAIVERS.—The National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–

160) is amended by inserting the following new section at the end of subtitle D of title VIII:

"SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DESIGNATIONS.

"(a) ELIGIBLE PROGRAMS.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430 note):

"(1) Defense Personnel Support Center medical, clothing and textile, and subsistence programs with respect to the following:

"(A) All contracts for processed fruits and vegetables and frozen seafood items for both depot stock and direct vendor delivery.

"(B) All contracts in the subsistence prime vendor program for grocery items.

"(C) All contracts in the Mail Order Pharmacy Program, the prime vendor programs for pharmaceuticals and for medical surgical items for delivery to military hospitals.

"(D) All contracts in the medical electronic commerce program for acquisition for depot stock and direct vendor delivery.

"(E) All contracts for the following items: dress coats (small lots), dress coats, duffel bags, Navy work clothing, general purpose tents, suitcases, gloves for electrical workers, boot flyers, socks, drawers, undershirts, and items offered under the Broad Agency Announcements for Clothing and Textiles Advanced Business Practices Demonstration Program.

"(2) The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components with development of software as required to generate the training exercises and component interfaces.

"(3) The Joint Direct Attack Munition program (JDAM I) with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit for inventory 1,000 and 2,000 pound bombs.

"(4) The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer air-

craft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

"(5) The Commercial Derivatives Aircraft program with respect to all contracts directly related to the acquisition or upgrading of civil-derivative aircraft for use in (A) foreign military sales of Airborne Warning and Control Systems to foreign governments with modifications of a type customarily provided to commercial customers, or (B) future Air Force airlift and tanker requirements.

"(6) The Commercial Derivative Engine program with respect to all contracts directly related to the acquisition of (A) commercially derived engines (including spare engines), logistics support equipment, technical orders, management data, and initial spare parts for use in the C–17A production line, and (B) commercially derived engines to support the purchase of commercial-derivative aircraft to meet future Air Force airlift and tanker requirements, including engine replacement and upgrades.

"(b) WAIVER AUTHORITY.—Subject to section 809(c) of the National Defense Authorization Act for Fiscal Year 1991, the Secretary of Defense is authorized—

"(1) to apply any amendment or repeal of a provision of law made in the Federal Acquisition Streamlining Act of 1994 to the programs described in subsection (a) before the effective date of such amendment or repeal; and

"(2) to apply to a procurement of noncommercial items under such programs—

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

"(B) any exception applicable under such Act (or an amendment made by a provision of such 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 noncommercial items.

"(c) PILOT PROGRAM IMPLEMENTATION.—In exercising the authority provided in section 809 of the National Defense Authorization Act for 1991, and in accordance with

sections 833 through 839 of this Act, the Secretary of Defense, shall take the following actions:

"(1) MISSION-ORIENTED PROGRAM MANAGEMENT.—For one or more of the defense acquisition programs designated for participation in the defense acquisition pilot program, prescribe and implement procedures which—

"(A) provide for interaction between the program manager and the commander of the operational command responsible for the requirement for the equipment acquired;

"(B) include provisions for a determination by the commander that items proposed for procurement fulfill the need defined in approved requirements documents; and

"(C) may include a role for the operational commander in decision making for program milestone decisions and performance of acceptance testing of items acquired.

"(2) SAVINGS OBJECTIVES.—Not later than 45 days after the date of enactment of the Federal Acquisition Streamlining Act of 1994, identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

"(3) PROGRAM PHASES.—For each defense acquisition program participating in the pilot program, incorporate in an approved acquisition strategy a program review process that provides senior acquisition officials with reports that—

"(A) contain essential information on program results at quarterly intervals;

"(B) reduce data requirements from the current major program review reporting requirements; and

"(C) include data on program costs estimates, actual expenditures, performance estimates, performance data from tests, and, consistent with existing statutes, the minimum necessary other data items required to ensure the appropriate expenditure of funds appropriated for that program.

"(4) PROGRAM WORK FORCE POLICIES.—With regard to the review of incentives and personnel actions required under section 836 of this Act—

"(A) not later than 60 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994—

"(i) complete the review; and

"(ii) on the basis of the review, define one or more systems that relate incentives, including pay, to achievement of budgets, schedules, and performance requirements;

"(B) not later than 120 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994—

"(i) apply such a system of incentives to not less than one defense acquisition program participating in the pilot program; and

"(ii) provide for an assessment of the effectiveness of that system; and

"(C) incorporate the results of actions taken pursuant to this paragraph into the development of regulations for the implementation of section 5001(b) of the Federal Acquisition Streamlining Act of 1994.

"(5) EFFICIENT CONTRACTING PROCESS.—Take any additional actions that the Secretary considers necessary to waive regulations, not required by statute, that affect the efficiency of the contracting process, including, in the Secretary's discretion, defining alternative techniques to reduce reliance on military specifications and standards in contracts for the de-

fense acquisition programs participating in the pilot program.

"(6) CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT.—For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, define payment milestones on the basis of quantitative measures of results.

"(7) CONTRACTOR PERFORMANCE ASSESSMENT.—Collect and evaluate performance information on each contract entered into for a defense acquisition program participating in the pilot program, including information on cost, schedule, and technical performance for each contractor supporting a participating program.

"(d) APPLICABILITY.—(1) Subsection (b) applies with respect to—

"(A) a contract that is awarded or modified during the period described in paragraph (2); and

"(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

''(2) The period referred to in paragraph (1) is the period that begins 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 and ends on September 30, 1998.''.

(b) RULE OF CONSTRUCTION.—Nothing in section 840 of the National Defense Authorization Act for Fiscal Year 1994, as added by subsection (a), shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a) of such section 840.

Subtitle B—Civilian Agency Acquisitions

SEC. 5051. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED MANAGEMENT OF PROGRAMS.—

(1) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 301 et seq.), as amended by sections 1552 and 1553, is further amended by adding at the end the following new section:

''PERFORMANCE BASED MANAGEMENT: ACQUISITION PROGRAMS

''SEC. 311. (a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost and sched-

ule goals established for the research and development programs and acquisition programs of the agency without reducing the performance or capabilities of the items being acquired.

"(b) ESTABLISHMENT OF GOALS.—(1) The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

"(2) The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major defense acquisition program of the agency.

"(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—Whenever it is necessary to do so in order to implement the policy set out in subsection (a), the head of an executive agency shall—

"(1) identify and consider whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements taking into consideration—

"(A) the needs of the agency known as of the time of consideration;

"(B) the state of the technology or technologies relevant to the programs and to the needs of the agency;

"(C) the estimated costs and projected schedules necessary for the completion of such programs; and

"(D) other pertinent information; and

"(2) identify existing and potential research and development programs and acquisition programs that are suitable alternatives for programs considered pursuant to paragraph (1).".

(2) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by sections 1552 and 1553, is further amended by inserting after the item relating to section 310 the following new item:

"Sec. 311. Performance based management: acquisition programs.".

(b) ANNUAL REPORTING REQUIREMENT.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), as amended by section 1091, is further amended by adding at the end the following new subsection:

"(k) The Administrator shall submit to Congress, on an annual basis, an assessment of the progress made in executive agencies in implementing the policy stated in section 311(a) of the Federal Property and Administrative Services Act of 1949. The Administrator shall use data from existing management systems in making the assessment.".

(c) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—Within one year after the date of the enactment

of this Act, the Administrator for Federal Procurement Policy, in consultation with appropriate officials in other departments and agencies of the Federal Government, shall, to the maximum extent consistent with applicable law—

(1) establish policies and procedures for the heads of such departments and agencies to designate acquisition positions and manage employees (including the accession, education, training and career development of employees) in the designated acquisition positions;

(2) extend to the acquisition workforce of the entire executive branch the acquisition workforce policies contained in chapter 87 of title 10, United States Code, relating to the acquisition workforce of the Department of Defense; and

(3) review the incentives and personnel actions available to the heads of department and agencies of the Federal Government for encouraging excellence in the acquisition workforce of the Federal Government and provide an enhanced system of incentives for the encouragement of excellence in such workforce which—

(A) relates pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the

cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 311(b) of the Federal Property and Administrative Services Act of 1949, as added by subsection (a)); and

(B) provides for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

(d) RECOMMENDED LEGISLATION.—Not later than one year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 311 of the Federal Property and Administrative Services Act of 1949, as added by subsection (a), and otherwise to facilitate and enhance management of Federal Government acquisition programs and the acquisition workforce of the Federal Government on the basis of performance.

SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.

(a) DEVELOPMENT OF PROCESS REQUIRED.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal agencies, shall develop a results-oriented acquisition process for implemen-

tation by agencies in acquisitions of property and services by the Federal agencies. The process shall include the identification of quantitative measures and standards for determining the extent to which an acquisition of noncommercial items by a Federal agency satisfies the needs for which the items are being acquired.

(b) INAPPLICABILITY OF PROCESS TO DEPARTMENT OF DEFENSE.—The process developed pursuant to subsection (a) may not be applied to the Department of Defense.

Subtitle C—Miscellaneous

SEC. 5091. CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS.

The Office of Federal Procurement Policy Act, as amended by section 4021, is further amended by adding at the end the following:

''CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS

''SEC. 31. (a) ESTABLISHMENT.—There is hereby established an executive branch program to recognize and promote exceptional contract performance by Federal Government contractors.

''(b) SELECTION.—(1) The Administrator shall ensure the establishment of criteria for selection of contractors to receive exceptional performance awards under the program.

''(2) The head of an executive agency may select one or more agency contractors to receive an exceptional performance award under the program.

"(c) AWARD CEREMONY.—The Vice President, or the head of the executive agency selecting a contractor for an exceptional performance award, shall present the award to the contractor with such ceremony as the Vice President or head of the agency, as the case may be, considers appropriate.".

SEC. 5092. DEPARTMENT OF DEFENSE ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS.

Section 2386 of title 10, United States Code, is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) Technical data and computer software.

"(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.".

TITLE VI—STANDARDS OF CONDUCT

Subtitle A—Ethics Provisions

SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PROCUREMENT POLICY ACT.

(a) RECUSAL.—Subsection (c) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended—

(1) in paragraph (1)—

(A) in the matter above subparagraph (A), by inserting ''only'' after ''subsection (b)(1)''; and

(B) in subparagraph (A), by inserting ''(including the modification or extension of a contract)'' after ''any procurement'';

(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof:

''(2) Whenever the head of a procuring activity approves a recusal under paragraph (1), a copy of the recusal request and the approval of the request shall be retained by such official for a period (not less than five years) specified in regulations prescribed in accordance with subsection (o).

''(3)(A) Except as provided in subparagraph (B), all recusal requests and approvals of recusal requests pursuant to this subsection shall be made available to the public on request.

''(B) Any part of a recusal request or an approval of a recusal request that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public otherwise required under subparagraph (A).''; and

(3) in paragraph (4), by striking out ''competing contractor'' and inserting in lieu thereof ''person''.

(b) APPLICABILITY OF CERTIFICATION REQUIREMENT.—Subsection (e)(7)(A) of such section is amended by adding at the end the following: ''However, paragraph (1)(B) does not apply with respect to a contract for less than $500,000.''.

(c) RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection (f) of such section is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

''(1) No individual who, in the year prior to separation from service as an officer or employee of the Government or an officer of the uniformed services in a covered position, participated personally and substantially in acquisition functions related to a contract, subcontract, or claim of $500,000 or more and—

''(A) engaged in repeated direct contact with the contractor or subcontractor on matters relating to such contract, subcontract, or claim; or

''(B) exercised significant ongoing decisionmaking responsibility with respect to the contractor or

subcontractor on matters relating to such contract, subcontract, or claim,

shall knowingly accept or continue employment with such contractor or subcontractor for a period of 1 year following the individual's separation from service, except that such individual may accept or continue employment with any division or affiliate of such contractor or subcontractor that does not produce the same or similar products as the entity involved in the negotiation or performance of the contract or subcontract or the adjustment of the claim.

''(2) No contractor or subcontractor, or any officer, employee, agent, or consultant of such contractor or subcontractor shall knowingly offer, provide, or continue any employment for another person, if such contractor, subcontractor, officer, employee, agent, or consultant knows or should know that the acceptance of such employment is or would be in violation of paragraph (1).

''(3) The head of each Federal agency shall designate in writing as a 'covered position' under this section each of the following positions in that agency:

''(A) The position of source selection authority, member of a source selection evaluation board, or chief of a financial or technical evaluation team, or any other position, if the officer or employee in that position is likely personally to exercise substantial re-

sponsibility for ongoing discretionary functions in the evaluation of proposals or the selection of a source for a contract in excess of $500,000.

"(B) The position of procuring contracting officer, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the negotiation of a contract in excess of $500,000 or the negotiation or settlement of a claim in excess of $500,000.

"(C) The position of program executive officer, program manager, or deputy program manager, or any other position, if the officer or employee in that position is likely personally to exercise similar substantial responsibility for ongoing discretionary functions in the management or administration of a contract in excess of $500,000.

"(D) The position of administrative contracting officer, the position of an officer or employee assigned on a permanent basis to a Government Plant Representative's Office, the position of auditor, a quality assurance position, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the on-site oversight of a con-

tractor's operations with respect to a contract in excess of $500,000.

''(E) A position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in operational or developmental testing activities involving repeated direct contact with a contractor regarding a contract in excess of $500,000.''.

(d) DISCLOSURE OF PROPRIETARY OR SOURCE SELECTION INFORMATION TO UNAUTHORIZED PERSONS.—Subsection (l) of such section is amended—

(1) by inserting ''who are likely to be involved in contracts, modifications, or extensions in excess of $25,000'' in the first sentence after ''its procurement officials''; and

(2) by striking out ''(e)'' each place it appears and inserting in each such place ''(f)''.

(e) RULES OF CONSTRUCTION.—Subsection (n) of such section is amended to read as follows:

''(n) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) authorize the withholding of any information from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract

appeals of a Federal agency, the Comptroller General, or an inspector general of a Federal agency;

''(2) restrict the disclosure of information to, or receipt of information by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

''(3) restrict a contractor from disclosing its own proprietary information or the recipient of information so disclosed by a contractor from receiving such information; or

''(4) restrict the disclosure or receipt of information relating to a Federal agency procurement that has been canceled by the agency and that the contracting officer concerned determines in writing is not likely to be resumed.''.

(f) TERM TO BE DEFINED IN REGULATIONS.—Subsection (o)(2)(A) of such section is amended—

(1) by inserting ''money, gratuity, or other'' before ''thing of value' ''; and

(2) by inserting before the semicolon ''and such other exceptions as may be adopted on a Government-wide basis under section 7353 of title 5, United States Code''.

(g) TERMS DEFINED IN LAW.—Subsection (p) of such section is amended—

(1) in paragraph (1) by striking out ''clauses (i)–(viii)'' and inserting in lieu thereof ''clauses (i) through (vii)'';

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking out clause (i);

(ii) by redesignating clauses (ii), (iii), (iv), (v), (vi), (vii), and (viii) as clauses (i), (ii), (iii), (iv), (v), (vi), and (vii), respectively; and

(iii) in clause (i) (as redesignated by subclause (II) of this clause), by striking out ''review and approval of a specification'' and inserting in lieu thereof ''approval or issuance of a specification, acquisition plan, procurement request, or requisition''; and

(B) in subparagraph (B), by striking out all after ''includes'' and inserting in lieu thereof the following: ''any individual acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned, regardless of whether such individual is a consultant, expert, or adviser, or an officer or employee of a contractor or subcontractor (other than a competing contractor).''; and

(3) in paragraph (6)(A), by inserting ''nonpublic'' before ''information''.

SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

Section 208(a) of title 18, United States Code, is amended—

(1) by inserting ''(1)'' before ''Except as permitted''; and

(2) by adding at the end the following new paragraph:

''(2) Whoever knowingly aids, abets, counsels, commands, induces, or procures conduct prohibited by this section shall be subject to the penalties set forth in section 216 of this title.''.

SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.

(a) REPEAL.—The following provisions of law are repealed:

(1) Sections 2207, 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 281 of title 18, United States Code.

(3) Section 801 of title 37, United States Code.

(4) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218).

(b) CLERICAL AMENDMENTS.—

(1) TITLE 10.—Part IV of subtitle A of title 10, United States Code, is amended—

(A) in the table of sections at the beginning of chapter 131, by striking out the item relating to section 2207; and

(B) in the table of sections for chapter 141, by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) TITLE 18.—The table of sections for chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) TITLE 37.—The table of sections for chapter 15 of title 37, United States Code, is amended by striking out the item relating to section 801.

(4) DEPARTMENT OF ENERGY ORGANIZATION ACT.—The table of contents for the Department of Energy Organization Act is amended by striking out the matter relating to part A of title VI.

SEC. 6004. IMPLEMENTATION.

(a) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, regulations implementing the amendments made by section 6001 to section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), including definitions of the terms used in subsection (f) of such section, shall be issued in accordance with sections 6

and 25 of such Act (41 U.S.C. 405 and 521) after coordination with the Director of the Office of Government Ethics.

(b) SAVINGS PROVISIONS.—

(1) CONTRACTOR CERTIFICATIONS.—No officer, employee, agent, representative, or consultant of a contractor who has signed a certification under section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) before the effective date of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(2) FEDERAL PROCUREMENT OFFICIAL CERTIFICATIONS.—No procurement official of a Federal agency who has signed a certification under section 27(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(l)) before the date of enactment of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(c) INSPECTOR GENERAL REPORTS.—Not later than May 31 of each of the years 1995 through 1998, the Inspector General of each Federal agency (or, in the case of a Federal agency that does not have an Inspector General, the head of such agency) shall submit to Congress a report on the compliance by the agency during the preceding year with the requirement for the head of the agency to designate covered procurement positions under section 27(f)(3) of the

Office of Federal Procurement Policy Act (as added by section 6001(c)).

Subtitle B—Additional Amendments

SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL.

(a) AMENDMENT OF OFPP ACT.—The Office of Federal Procurement Policy Act, as amended by section 1092, is further amended by inserting after section 22 the following new section 23:

''CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL

''SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—(1) No person who is not a person described in subsection (b) may be paid by an agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (b) with adequate training and capabilities to perform such evaluations and analyses are not readily available within the agency or another Federal agency, as determined in accordance with standards and procedures prescribed in the Federal Acquisition Regulation.

''(2) In the administration of this subsection, the head of each agency shall determine in accordance with the

standards and procedures set forth in the Federal Acquisition Regulation whether—

''(A) a sufficient number of personnel described in subsection (b) within the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the agency head making the determination; and

''(B) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

''(b) COVERED PERSONNEL.—For purposes of subsection (a), the personnel described in this subsection are as follows:

''(1) An employee, as defined in section 2105 of title 5, United States Code.

''(2) A member of the Armed Forces of the United States.

''(3) A person assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5, United States Code.

''(c) RULE OF CONSTRUCTION.—Nothing in this section is intended to affect the relationship between the Federal Government and a federally funded research and development center.''.

(b) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—

(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

(2) provide guidance and promulgate regulations regarding—

(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.

SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR STUDY AND REPORT.

Section 17 of the Office of Federal Procurement Policy Act (41 U.S.C. 415) is repealed.

SEC. 6053. INTERESTS OF MEMBERS OF CONGRESS.

Section 3741 of the Revised Statutes (41 U.S.C. 22) is amended to read as follows:

''No member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.''.

SEC. 6054. WAITING PERIOD FOR SIGNIFICANT CHANGES PROPOSED FOR ACQUISITION REGULATIONS.

Section 22(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) is amended—

(1) by striking out ''30 days'' and inserting in lieu thereof ''60 days''; and

(2) by adding at the end the following: ''Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date.''.

Subtitle C—Whistleblower Protection

SEC. 6101. ARMED SERVICES PROCUREMENTS.

(a) WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.—Section 2409 of title 10, United States Code, is amended—

(1) by striking out subsection (d);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

"(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the Secretary of Defense determines that a defense contractor has subjected a person to a reprisal prohibited by subsection (a), the Secretary may take one or more of the following actions:

"(A) Order the defense contractor to take affirmative action to abate the reprisal.

"(B) Order the defense contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

"(C) Order the defense contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorney's fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the Secretary.

"(2) Whenever a person fails to comply with an order issued under paragraph (1), the Secretary shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the Secretary's order. Review shall conform to chapter 7 of title 5.".

(b) RELATED LAW.—

(1) REPEAL.—Section 2409a of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2409a.

SEC. 6102. GOVERNMENTWIDE WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 5091, is further amended by adding at the end the following new section:

"CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION

"SEC. 32. (a) PROHIBITION OF REPRISALS.—An employee of an executive agency contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of the agency or the Department of Justice information relating to a substantial violation of law related to an agency contract (including the competition for or negotiation of an agency contract).

"(b) INVESTIGATION OF COMPLAINTS.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency. In the case of an executive agency that does not have an inspector general,

the duties of the inspector general under this section shall be performed by an official designated by the agency head.

"(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the head of an executive agency determines that an agency contractor has subjected a person to a reprisal prohibited by subsection (a), the agency head may take one or more of the following actions:

"(A) Order the contractor to take affirmative action to abate the reprisal.

"(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

"(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorney's fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the Secretary.

"(2) Whenever a person fails to comply with an order issued under paragraph (1), the agency head shall file an action for enforcement of such order in the United States

district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the agency head's order. Review shall conform to chapter 7 of title 5, United States Code.

"(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

"(e) COORDINATION WITH OTHER LAW.—This section does not apply with respect to the Department of Defense. For the corresponding provision of law applicable to the Department of Defense, see section 2409 of title 10, United States Code.

''(f) DEFINITION.—In this section, the term 'Inspector General' means an Inspector General appointed under the Inspector General Act of 1978.''.

TITLE VII—DEFENSE TRADE AND COOPERATION

SEC. 7001. PURCHASES OF FOREIGN GOODS.

(a) REPEAL OF EXECUTED REQUIREMENTS.—

(1) REQUIREMENT FOR POLICY GUIDANCE.—Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the ''Buy American Act'', is amended in section 4(g) (41 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C) and (3).

(2) REPORTING REQUIREMENT.—Section 9096(b) of Public Law 102–396 (106 Stat. 1924; 41 U.S.C. 10b–2(b)) is repealed.

(b) REPEAL OF REDUNDANT PROVISION.—

(1) CONSIDERATION OF NATIONAL SECURITY OBJECTIVES.—Section 2327 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2327.

SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.

(a) TERMINOLOGY REVISIONS.—Section 2531 of title 10, United States Code, is amended—

(1) in the subsection captions for subsections (a) and (c), by striking out ''MOUS AND RELATED'' and inserting in lieu thereof ''INTERNATIONAL'';

(2) in subsection (a), by striking out ''proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding,'' in the matter above paragraph (1) and inserting in lieu thereof ''proposed international agreement, including a memorandum of understanding,'';

(3) by striking out ''memorandum of understanding or related agreement'' each place it appears and inserting in lieu thereof ''international agreement'';

(4) in subsection (b), by striking out ''memorandum or related agreement'' each place it appears in the second sentence and inserting in lieu thereof ''international agreement''; and

(5) in subsection (c)—

(A) by striking out ''A'' after ''AGREEMENTS.—'' and inserting in lieu thereof ''An''; and

(B) by striking out ''memorandum or agreement'' and inserting in lieu thereof ''international agreement''.

(b) EXPANDED SCOPE OF AGREEMENTS.—Section 2531(a) of title 10, United States Code, is amended by striking out ''research, development, or production'' in the matter above paragraph (1) and inserting in lieu thereof ''research, development, production, or logistics support''.

(c) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 2531 of title 10, United States Code, is amended to read as follows:

''§ 2531. Defense international agreements''.

(2) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of subchapter V of chapter 148 of such title is amended to read as follows:

''2531. Defense international agreements.''.

SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS, AND STANDARDIZATION.

(a) LIMITED WAIVER OF RESTRICTIONS ON ACCRUED REIMBURSABLE LIABILITIES AND CREDITS FOR CONTINGENCY OPERATIONS.—Section 2347 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c) The Secretary of Defense may waive the restrictions in subsections (a) and (b) for a period not to exceed 180 days upon a written determination that the armed forces are involved in a contingency operation or that involvement of the armed forces in a contingency operation is imminent. Upon making such a determination, the Secretary shall transmit a copy of the determination to the Committees on Armed Services of the Senate and House of Representatives.''.

(b) COMMUNICATIONS SUPPORT.—Section 2350f of title 10, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d)(1) Nothing in this section shall be construed to limit the authority of the Secretary of Defense, without a formal bilateral agreement or multilateral arrangement, to furnish communications support and related supplies to, or receive communications support and related supplies from, an allied country in accordance with this subsection.

''(2) The Secretary of Defense may furnish or receive such support and supplies on a reciprocal basis for a period not to exceed 90 days—

''(A) in order to meet emerging operational requirements of the United States and the allied country; or

''(B) incident to a joint military exercise with the allied country.

''(3) If interconnection of communication circuits is maintained for joint or multilateral defense purposes under the authority of this subsection, the costs of maintaining such circuits may be allocated among the various users.''.

TITLE VIII—COMMERCIAL ITEMS

SEC. 8001. DEFINITIONS.

Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), as amended by section 4001(a), is further amended—

(1) by striking out ''Act—''and inserting in lieu thereof ''Act:'';

(2) by capitalizing the initial letter in the first word of each paragraph;

(3) by striking out the semicolon at the end of each of paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) and inserting in lieu thereof a period;

(4) in paragraphs (4) and (10), by striking out ''; and'' at the end and inserting in lieu thereof a period; and

(5) by adding at the end the following new paragraphs:

''(12) The term 'commercial item' means—

''(A) property, other than real property, that is of a type customarily used by the general public or by nongovernmental entities in the course of normal business operations for purposes other than governmental purposes and—

''(i) has been sold, leased, or licensed to the general public;

''(ii) has not been sold, leased, or licensed to the general public but has been offered for sale, lease, or license to the general public; or

''(iii) is not yet available in the commercial marketplace but will be made available for commercial delivery within a reasonable period;

''(B) any item that, but for—

''(i) modifications of a type customarily available in the commercial marketplace, or

''(ii) minor modifications made to meet Federal Government requirements,

would satisfy the criteria in subparagraph (A);

"(C) any combination of items meeting the requirements of subparagraph (A), (B), or (D) that are of a type customarily combined and sold in combination to the general public;

"(D) installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (A), (B), or (C) and if the source of such services—

"(i) offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

"(ii) offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public; and

"(E) any item, combination of items, or service referred to in subparagraph (A), (B), (C), or (D), regardless of whether the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

"(13) The term 'nondevelopmental item' means—

"(A) any commercial item;

"(B) any previously developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

"(C) any item of supply described in subparagraph (A) or (B) that requires only minor modification of the type normally available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

"(D) any item of supply currently being produced that does not meet the requirements of subparagraph (A), (B), or (C) solely because the item—

"(i) is not yet in use; or

"(ii) is not yet available in the commercial marketplace.

"(14) The term 'component' means any item supplied to the Federal Government as part of an end item or of another component.

''(15) The term 'commercial component' means any component that is a commercial item.''.

SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS.

(a) PREFERENCE REQUIRED.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 6102, is further amended by adding at the end the following new section:

''PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS

''SEC. 33. (a) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—

''(1) requirements of the executive agency with respect to a procurement of supplies are stated in terms of—

''(A) functions to be performed;

''(B) performance required; or

''(C) essential physical characteristics;

''(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items may be procured to fulfill such requirements; and

"(3) offerors of commercial items and other nondevelopmental items are provided an opportunity to compete in any procurement to fill such requirements.

"(b) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—

"(1) acquire commercial items or other nondevelopmental items to meet the needs of the executive agency;

"(2) require prime contractors and subcontractors at all levels under the executive agency contracts to incorporate commercial items or other nondevelopmental items as components of items supplied to the executive agency;

"(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items;

"(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other

nondevelopmental items in response to the executive agency solicitations;

''(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

''(6) require training of appropriate personnel in the acquisition of commercial items.

''(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an executive agency shall conduct market research appropriate to the circumstances—

''(A) before developing new specifications for a procurement by that executive agency; and

''(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

''(2) The head of an executive agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items available that—

''(A) meet the executive agency's requirements;

''(B) could be modified to meet the executive agency's requirements; or

''(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.''.

(b) REPEAL OF SUPERSEDED PROVISION.—

(1) SEPARATE STATEMENT OF PREFERENCE FOR DEPARTMENT OF DEFENSE.—Section 2325 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2325.

SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.

(a) REQUIRED FAR PROVISIONS.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8002, is further amended by adding at the end the following:

''FEDERAL ACQUISITION REGULATION PROVISIONS REGARDING ACQUISITIONS OF COMMERCIAL ITEMS AND COMPONENTS

''SEC. 34. (a) CONTRACT CLAUSES AND OTHER CLAUSES.—(1)(A) The Federal Acquisition Regulation shall include one or more sets of contract clauses containing the required terms and conditions for the acquisition of commercial items and commercial components by executive agencies and by contractors in the performance of contracts of executive agencies.

"(B) The contract clauses referred to in subparagraph (A) shall include only—

"(i) those clauses that are required to implement provisions of law applicable to acquisitions of commercial items or commercial components, as the case may be;

"(ii) those contract clauses that are essential for the protection of the Federal Government's interest in an acquisition of commercial items or commercial components, as the case may be; and

"(iii) those contract clauses that are determined to be consistent with standard commercial practice.

"(2) Subject to paragraph (3), the Federal Acquisition Regulation shall require that, to the maximum extent practicable, only the contract clauses referred to in paragraph (1) be used in a contract, or be required to be used in a subcontract, for the acquisition of commercial items or commercial components by or for an executive agency.

"(3) The Federal Acquisition Regulation shall provide that a contract or subcontract referred to in paragraph (2) may contain contract clauses other than the contract clauses referred to in that paragraph only if the other clauses are essential for the protection of the Federal Government's interest in—

"(A) that contract or subcontract, as determined in writing by the contracting officer for such contract; or

"(B) a class of contracts or subcontracts, as determined by the head of an agency concerned, unless the determination of that head of an agency is disapproved by the Administrator.

"(4) The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to paragraph (1), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

"(b) MARKET ACCEPTANCE.—The Federal Acquisition Regulation shall provide that under appropriate conditions the head of an executive agency may require offerors to demonstrate that the items offered—

"(1) have either—

"(A) achieved commercial market acceptance; or

"(B) been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

"(2) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

"(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The Federal Acquisition Regulation shall include a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts, be used, to the maximum extent practicable, for the acquisition of commercial items.

"(d) CONTRACT QUALITY REQUIREMENTS.—The Federal Acquisition Regulation shall include provisions that—

"(1) permit, to the maximum extent practicable, a contractor under a commercial items acquisition to use the contractor's existing quality assurance system as a substitute for compliance with a requirement for the Federal Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Federal Government;

"(2) require that, to the maximum extent practicable, an executive agency accept commercial warranties (including extended warranties) offered by offerors of commercial items to commercial customers and use such warranties for the repair and replacement of commercial items; and

"(3) set forth guidance to executive agencies regarding the use of past performance of items and sources as a factor in contract award decisions.".

"(e) TREATMENT OF TRANSFERS BETWEEN AFFILIATES.—The Federal Acquisition Regulation shall provide

for a transfer of commercial items from one division, subsidiary, or affiliate of a contractor to another division, subsidiary, or affiliate of the contractor to be treated as a subcontract for purposes of section 35 of the Office of Federal Procurement Policy Act and the provisions of law amended by section 8005 of the Federal Acquisition Streamlining Act of 1994.''.

(b) DEFENSE CONTRACT CLAUSES.—

(1) TERMINATION OF DOD AUTHORITY.—Section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note) shall cease to be effective on the date on which the regulations implementing section 34 of the Office of Federal Procurement Policy Act, as added by subsection (a), become effective.

(2) SAVINGS PROVISION.—Notwithstanding section 34(a) of the Office of Federal Procurement Policy Act (as added by subsection (a)), contracts of the Department of Defense entered into before the date on which section 824(b) ceases to be effective under paragraph (1), and subcontracts entered into before such date under such contracts, may include clauses developed pursuant to paragraphs (2) and (3) of section 824(b) of the National Defense Authorization Act for

Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note).

SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8003, is further amended by adding at the end the following:

''CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO ACQUISITIONS OF COMMERCIAL ITEMS

''SEC. 35. (a) IN GENERAL.—The applicability of a provision of law described in subsection (c) that is enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 to contracts for the acquisition of commercial items may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

''(b) WAIVER OF APPLICABILITY TO SUBCONTRACTS.—(1) The applicability of a provision of law described in subsection (c) to subcontracts under a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial components may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

''(2) Nothing in this subsection shall be construed to authorize the waiver of the applicability of any provision of law with respect to—

''(A) any contract with a prime contractor; or

''(B) any subcontract under a contract with a prime contractor who does not substantially transform the commercial items supplied under the contract.

''(c) COVERED LAW.—A provision of law referred to in subsections (a) and (b) is any provision of law that, as determined by the Federal Acquisition Regulatory Council, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government.''.

SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF LAW.

(a) ARMED SERVICES ACQUISITIONS.—

(1) PROHIBITION ON CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, as amended by section 4022(a), is further amended by inserting before the period at the end of the sentence added by section 4022(a) the following: ''or to a contract for the acquisition of commercial items''.

(2) REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Paragraph (2) of section

2384(b) of title 10, United States Code, is amended to read as follows:

''(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items, as defined in section 2302 of this title.''.

(3) PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, as amended by section 4022(e), is further amended by adding at the end the following: ''The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''.

(4) PROHIBITION ON LIMITATION OF SUBCONTRACTOR DIRECT SALES.—Section 2402 of title 10, United States Code, as amended by section 4022(b), is further amended by adding at the end the following new subsection:

''(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that

subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

(5) CONTRACTOR INVENTORY ACCOUNTING SYSTEMS: STANDARDS.—Section 2410b of title 10, United States Code, is amended—

(A) by inserting ''(a) REGULATIONS REQUIRED.—'' before ''The Secretary of Defense''; and

(B) by adding at the end the following new subsection:

''(b) INAPPLICABILITY TO ACQUISITIONS OF COMMERCIAL ITEMS.—The regulations prescribed pursuant to subsection (a) need not apply to a contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''.

(6) PROHIBITION ON PERSONS CONVICTED OF DEFENSE-CONTRACT RELATED FELONIES.—Paragraph

(4) of section 2408(a) of title 10, United States Code, as added by section 4022(f), is amended—

(A) by inserting after subparagraph (A) the following:

''(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''; and

(B) by inserting ''or (B)'' before the period at the end of subparagraph (C).

(b) CIVILIAN AGENCY ACQUISITIONS.—

(1) RESTRICTIONS ON SUBCONTRACTOR SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g), as amended by section 4023(b), is further amended by adding at the end the following new subsection:

''(d) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government

being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.''.

(2) PROHIBITION ON CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)), as amended by section 4023(a) is further amended by inserting before the period at the end of the sentence added by section 4041 the following: ''or to a contract for the acquisition of commercial items''.

(c) ACQUISITIONS GENERALLY.—

(1) FEDERAL WATER POLLUTION CONTROL ACT.—Section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1368) is amended by adding at the end the following new subsection:

''(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

(2) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—The Contract Work Hours and Safety

Standards Act (title I of the Work Hours and Safety Act of 1962 (40 U.S.C. 327 et seq.)) is amended by adding at the end the following new section:

''SEC. 108. (a) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement in this title.

''(b) In subsection (a), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT REQUIREMENT RELATING TO PROCUREMENT INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by adding at the end the following new subparagraph:

''(C) This subsection does not apply to a contract for the acquisition of commercial items.''.

(4) CERTAIN PROVISIONS OF THE ANTI-KICKBACK ACT OF 1986.—

(A) REQUIREMENT FOR CONTRACT CLAUSE.—Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57), as amended by section 4024(b), is further amended by inserting before the period at the end of subsection (d) the follow-

ing: ''or to a prime contract for the acquisition of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))).''.

(B) INSPECTION AUTHORITY.—Section 8 of such Act (41 U.S.C. 58) is amended by adding at the end the following: ''This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''.

(5) DRUG-FREE WORKPLACE ACT OF 1988.—Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of Public Law 100–690; 41 U.S.C. 701(a)(1)), as amended by section 4024(e), is further amended by inserting after the matter inserted by such section 4024(e) the following: '', other than a contract for the procurement of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))),''.

(6) CLEAN AIR ACT.—Section 306 of the Clean Air Act (42 U.S.C. 7606) is amended by adding at the end the following new subsection:

''(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement

a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

(7) FLY AMERICAN REQUIREMENTS.—Section 1117 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1517) is amended by adding at the end the following new subsection:

''(e)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.

''(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).''.

SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OFFERS OF COMMERCIAL ITEMS.

Section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) is amended by adding at the end the following new paragraph:

''(4) The requirements of paragraph (3)(B) do not apply to contracts for the purchase of commercial items. The Administrator shall prescribe for such contracts appropriate limits on the applicability of a deadline for submis-

sion of bids or proposals that is required by subsection (a)(1). Such limits shall be incorporated in the Federal Acquisition Regulation.''.

SEC. 8007. ADVOCATES FOR ACQUISITION OF COMMERCIAL AND NONDEVELOPMENTAL ITEMS.

(a) RESPONSIBILITIES OF THE ADVOCATE FOR COMPETITION.—Section 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(c)) is amended to read as follows:

''(c) The advocate for competition for each procuring activity shall be responsible for promoting full and open competition, promoting the acquisition of commercial items and other nondevelopmental items, and challenging barriers to such acquisition, including such barriers as unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.''.

(b) REPEAL OF SUPERSEDED PROVISION.—Section 28 of such Act (41 U.S.C. 424) is repealed.

SEC. 8008. PROVISIONS NOT AFFECTED.

Nothing in this title shall be construed as amending, modifying, or superseding, or as intended to impair or restrict authorities or responsibilities under—

(1) section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759),

popularly referred to as the ''Brooks Automatic Data Processing Act'';

(2) title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.), popularly referred to as the ''Brooks Architect-Engineers Act'';

(3) section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or any other provision of that Act; or

(4) the Act of June 25, 1938 (41 U.S.C. 46–48c), that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), popularly referred to as the ''Javits-Wagner-O'Day Act''.

SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL GOVERNMENT USE OF MARKET RESEARCH.

(a) REPORT REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the use of market research by the Federal Government in support of the procurement of commercial items and nondevelopmental items.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) A review of existing Federal Government market research efforts to gather data concerning commercial and other nondevelopmental items.

(2) A review of the feasibility of creating a Government-wide data base for storing, retrieving, and analyzing market data, including use of existing Federal Government resources.

(3) Any recommendations for changes in law or regulations that the Comptroller General considers appropriate.

TITLE IX—EFFECTIVE DATES AND IMPLEMENTATION

SEC. 9001. EFFECTIVE DATES.

(a) EFFECTIVE DATE OF ACT.—Except as otherwise provided in this Act, this Act shall take effect on the date of the enactment of this Act.

(b) EFFECTIVE DATE OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the date on which final implementing regulations are prescribed in accordance with section 9002.

SEC. 9002. IMPLEMENTING REGULATIONS.

(a) PROPOSED CHANGES.—Proposed changes to the Federal Acquisition Regulation and such other proposed regulations (or changes to existing regulations) as may be necessary to implement this Act shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) APPLICABILITY.—(1) The amendments made by this Act shall apply, in the manner prescribed in such final regulations, to any solicitation that is issued or any unsolicited proposal that is received on or after the date described in paragraph (3).

(2) The amendments made by this Act shall apply, to the extent and in the manner prescribed in such final regulations, to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such regulations, which—

(A) shall not be earlier than the end of the 30-day period that begins on the date the regulations required by subsection (c) are published; and

(B) shall not be later than October 1, 1995.

(e) SAVINGS PROVISION.—Nothing in this Act shall be construed to affect the validity of any action taken or any contract entered into prior to the date specified in the regulations pursuant to subsection (d)(3) except to the extent and in the manner prescribed in such regulations.

SEC. 9003. EVALUATION BY THE COMPTROLLER GENERAL.

(a) EVALUATION RELATING TO ISSUANCE OF REGULATIONS.—Not later than December 1, 1995, the Comptroller General shall submit to the committees referred to in subsection (c) a report evaluating compliance with the requirements in section 9002, relating to the issuance of implementing regulations.

(b) EVALUATION OF IMPLEMENTATION OF REGULATIONS.—Not later than December 1, 1996, the Comptroller General shall submit to the committees referred to in subsection (c) a report evaluating the effectiveness of the regulations implementing this Act in streamlining the acquisition system and fulfilling the other purposes of this Act.

(c) COMMITTEES DESIGNATED TO RECEIVE THE REPORTS.—The Comptroller General shall submit the reports required by this section to the Committees on Armed Services and on Governmental Affairs of the Senate and the Committees on Small Business on Government Operations of the House of Representatives.

SEC. 9004. DATA COLLECTION THROUGH THE FEDERAL PROCUREMENT DATA SYSTEM.

(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect from contracts in excess of the simplified acquisition threshold data pertaining to the following matters:

(1) Contract awards made pursuant to competitions conducted pursuant to section 2323 of title 10, United States Code, or section 8(c) of the Small Business Act (15 U.S.C. 637(c)).

(2) Awards to business concerns owned and controlled by women.

(3) Number of offers received in response to a solicitation.

(4) Task order contracts.

(5) Contracts for the acquisition of commercial items.

(b) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

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