

103^D CONGRESS
2^D SESSION

S. 1982

To modernize and streamline Federal acquisition management and procedures,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, FEBRUARY 22), 1994

Mr. ROTH (for himself and Mr. COHEN) introduced the following bill; which
was read twice and referred to the Committee on Governmental Affairs

A BILL

To modernize and streamline Federal acquisition
management and procedures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acquisition
5 Management Improvement Act of 1994”.

1 **SEC. 2. TABLE OF CONTENTS.**

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

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

TITLE I—ACQUISITION IMPROVEMENT GOALS

- Sec. 101. Reduction in Federal Government procurement costs.
- Sec. 102. Armed services acquisitions.
- Sec. 103. Civilian agency acquisitions.

TITLE II—ACQUISITION MANAGEMENT POLICIES

Subtitle A—Armed Services Acquisitions

- Sec. 201. Implementation of defense acquisition workforce amendments.
- Sec. 202. Enhanced encouragement of excellence in the defense acquisition workforce.
- Sec. 203. Program management stability.

Subtitle B—Civilian Agency Acquisitions

- Sec. 211. Policy regarding training of Federal acquisition workforce.
- Sec. 212. Acquisition workforce management system.
- Sec. 213. Enhanced encouragement of excellence in the Federal acquisition workforce.
- Sec. 214. Inapplicability to Department of Defense.

TITLE III—ORGANIZATION OF THE ACQUISITION PROCESS

Subtitle A—Armed Services Procurements

- Sec. 301. Reorganization of acquisition authority.
- Sec. 302. Phase funding and review of defense acquisition programs.

Subtitle B—Civilian Agency Acquisitions

- Sec. 311. Customer-driven acquisitions.
- Sec. 312. Review of agency organization for acquisitions.
- Sec. 313. Acquisition of noncommercial items.
- Sec. 314. Inapplicability to Department of Defense.

TITLE IV—CONTRACT FORMATION

Subtitle A—Specifications and Standards

- Sec. 401. Preference for commercial items.

Subtitle B—Performance-Based Contracting

- Sec. 411. Use of incentive contracts.
- Sec. 412. Guidance regarding consideration of past contract performance of offerors.

TITLE V—PERFORMANCE-BASED CONTRACT ADMINISTRATION

- Sec. 501. Contract financing in armed services acquisitions.
 Sec. 502. Contract financing in civilian agency acquisitions.

TITLE VI—DAVIS-BACON ACT EXEMPTION

- Sec. 601. Contracts not in excess of \$500,000.

TITLE VII—MISCELLANEOUS CONFORMING AMENDMENTS

- Sec. 701. Modification of the responsibility of the Comptroller of the Department of Defense for defense acquisition budgets.
 Sec. 702. The defense acquisition work force.
 Sec. 703. Procurement procedures generally.
 Sec. 704. Research and development.
 Sec. 705. Miscellaneous procurement provisions.
 Sec. 706. Major defense acquisition programs.
 Sec. 707. Service specific acquisition authority.
 Sec. 708. Other laws.

TITLE VIII—EFFECTIVE DATE

- Sec. 801. Effective date.

1 **TITLE I—ACQUISITION**
 2 **IMPROVEMENT GOALS**

3 **SEC. 101. REDUCTION IN FEDERAL GOVERNMENT PRO-**
 4 **CUREMENT COSTS.**

5 (a) POLICY.—It is the policy of Congress that, by the
 6 end of fiscal year 1999, there should be achieved Federal
 7 budget savings in procurement costs of the Federal Gov-
 8 ernment (including the personnel and other overhead costs
 9 associated with procurements for the Federal Govern-
 10 ment) in a total amount of at least the \$22,500,000,000
 11 that is projected for savings from Federal procurement
 12 streamlining in the report on the National Performance
 13 Review carried out during 1993 under the direction of the
 14 Vice President.

15 (b) ANNUAL PROGRESS REPORT.—The Director of
 16 the Office of Management and Budget shall transmit to

1 Congress each year, at the same time that the President
2 submits the budget to Congress pursuant to section 1105
3 of title 31, United States Code, an assessment of the
4 progress made in implementing the policy set out in sub-
5 section (a).

6 **SEC. 102. ARMED SERVICES ACQUISITIONS.**

7 (a) ACQUISITION PERFORMANCE GOALS.—Section
8 2301 of title 10, United States Code, is amended by add-
9 ing at the end the following new subsection:

10 “(e)(1) It is the policy of Congress that, on and after
11 January 1, 2000—

12 “(A) the Department of Defense should achieve,
13 on average, 90 percent of the cost and schedule
14 goals established for the research and development
15 programs and acquisition programs of the Depart-
16 ment of Defense; and

17 “(B) the average period necessary for convert-
18 ing an emerging technology into initial operational
19 capability for the Department of Defense should not
20 exceed 8 years.

21 “(2) Whenever it is necessary in order to implement
22 the policy set out in paragraph (1), the Secretary of De-
23 fense should—

24 “(A) identify and consider for termination re-
25 search and development programs and acquisition

1 programs of the Department of Defense that are not
2 achieving the cost, performance, and schedule goals
3 of the programs taking into consideration—

4 “(i) the needs of the Department known as
5 of the time of the consideration of such pro-
6 grams for termination;

7 “(ii) the state of the technology or tech-
8 nologies relevant to the programs and to the
9 needs of the Department;

10 “(iii) the estimated costs and projected
11 schedules necessary for the completion of such
12 programs; and

13 “(iv) other pertinent information; and

14 “(B) identify existing and potential research
15 and development programs and acquisition programs
16 that are suitable alternatives for programs consid-
17 ered for termination pursuant to subparagraph
18 (A).”.

19 (b) RESPONSIBILITY FOR DEPARTMENTAL OVER-
20 SIGHT OF ACQUISITION PROGRAM GOALS.—

21 (1) IN GENERAL.—Chapter 131 of title 10,
22 United States Code, is amended by adding at the
23 end the following new section:

1 **“§ 2219. Responsibility for departmental oversight of**
2 **cost, performance, and schedule goals of**
3 **acquisition programs**

4 “(a) COST GOALS.—The Comptroller of the Depart-
5 ment of Defense shall evaluate the cost goals proposed for
6 each phase of an acquisition program of the Department
7 of Defense.

8 “(b) PERFORMANCE AND SCHEDULE GOALS.—The
9 Joint Chiefs of Staff shall approve or define the perform-
10 ance and schedule goals for acquisition programs of the
11 Department of Defense. The Joint Chiefs of Staff shall
12 approve the performance goals for acquisition programs
13 on the basis of cost, schedule, performance, and risk.

14 “(c) ANNUAL REPORTING REQUIREMENT.—The Sec-
15 retary of Defense shall include in the annual report sub-
16 mitted to Congress pursuant to section 113(c) of this
17 title—

18 “(1) an assessment of the progress made in im-
19 plementing the policies set out in section 2301(e)(1)
20 of this title; and

21 “(2) any actions taken or considered in accord-
22 ance with section 2301(e)(2) of this title.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of chapter 131 of title 10,
25 United States Code, is amended by adding at the
26 end the following new item:

“2219. Responsibility for departmental oversight of cost, performance, and schedule goals of acquisition programs.”.

1 **SEC. 103. CIVILIAN AGENCY ACQUISITIONS.**

2 (a) ACQUISITION PERFORMANCE GOALS.—

3 (1) IN GENERAL.—It is the policy of Congress
4 that, on and after January 1, 2000, each depart-
5 ment and agency of the Federal Government should
6 achieve, on average, 90 percent of the cost and
7 schedule goals established for the research and de-
8 velopment programs and acquisition programs of
9 that department or agency.

10 (2) NONDUPLICATION OF GOAL STATEMENT.—

11 Paragraph (1) does not apply to the Department of
12 Defense. For the statement of the corresponding
13 goal for the Department of Defense see subsection
14 (e)(1)(A) of section 2301 of title 10, United States
15 Code, as added by section 102(a).

16 (b) RESPONSIBILITY FOR AGENCY OVERSIGHT OF
17 ACQUISITION PROGRAM COST GOALS.—The Office of
18 Federal Procurement Policy Act (41 U.S.C. 401 et seq.)
19 is amended by adding at the end the following new section:

20 “AGENCY OVERSIGHT OF COST GOALS OF ACQUISITION
21 PROGRAMS

22 “SEC. 29. The chief financial officer of an executive
23 agency shall evaluate the cost goals proposed for each
24 phase of an acquisition program of the agency.”.

1 (c) RESPONSIBILITY FOR AGENCY OVERSIGHT OF
2 ACQUISITION PROGRAM PERFORMANCE AND SCHEDULE
3 GOALS.—Section 303A of the Federal Property and Ad-
4 ministrative Services Act of 1949 (41 U.S.C. 253a) is
5 amended by adding at the end the following new sub-
6 section:

7 “(c) The head of an executive agency shall approve
8 or define the performance and schedule goals for acquisi-
9 tion programs of that agency. The agency head shall ap-
10 prove the performance goals for acquisition programs on
11 the basis of cost, schedule, performance, and risk.”.

12 **TITLE II—ACQUISITION**
13 **MANAGEMENT POLICIES**
14 **Subtitle A—Armed Services**
15 **Acquisitions**

16 **SEC. 201. IMPLEMENTATION OF DEFENSE ACQUISITION**
17 **WORKFORCE AMENDMENTS.**

18 The Congress—

19 (1) urges the Secretary of Defense to expedite
20 the implementation of the provisions of chapter 87
21 of title 10, United States Code, relating to the ac-
22 quisition workforce of the Department of Defense;
23 and

24 (2) reemphasizes the importance of ensuring
25 that the acquisition workforce is educated and

1 trained in accordance with the standards set out in
2 the provisions of such chapter.

3 **SEC. 202. ENHANCED ENCOURAGEMENT OF EXCELLENCE**
4 **IN THE DEFENSE ACQUISITION WORKFORCE.**

5 (a) ENHANCED SYSTEM OF INCENTIVES AND AD-
6 VERSE ACTIONS.—

7 (1) REVIEW AND ACTION REQUIRED.—The Sec-
8 retary of Defense shall review the incentives and
9 personnel actions available to the Secretary for en-
10 couraging excellence in the acquisition workforce of
11 the Department of Defense and, to the maximum ex-
12 tent practicable, provide an enhanced system of in-
13 centives for the encouragement of excellence in such
14 workforce.

15 (2) REQUIRED CONSIDERATION.—The Sec-
16 retary shall specifically consider whether action
17 should be taken under section 1736 of title 10, Unit-
18 ed States Code (as added by subsection (b)), in the
19 case of acquisition program executive officers and
20 acquisition program managers.

21 (3) REGULATIONS.—The Secretary shall pre-
22 scribe in regulations a system of incentives for en-
23 couraging professional excellence among the func-
24 tional analysts in the defense acquisition workforce.

1 (b) ENHANCED GRADES OF CERTAIN ACQUISITION
2 MANAGERS.—

3 (1) IN GENERAL.—Subchapter III of chapter
4 87 of title 10, United States Code, is amended—

5 (A) by redesignating sections 1736 and
6 1737 as sections 1737 and 1738, respectively;
7 and

8 (B) by inserting after section 1735 the fol-
9 lowing new section 1736:

10 **“§ 1736. Grade of certain acquisition managers**

11 “(a) PROGRAM EXECUTIVE OFFICER.—(1)(A) Sub-
12 ject to subparagraph (B), the position of acquisition pro-
13 gram executive officer carries the grade of brigadier gen-
14 eral, rear admiral (lower half), major general, or rear ad-
15 miral, as the Secretary of Defense determines appropriate.

16 “(B) The President may designate a position of ac-
17 quisition program executive officer as a position of impor-
18 tance and responsibility to carry the grade of lieutenant
19 general or vice admiral under section 601(a) of this title.

20 “(C) The President or the Secretary of Defense may
21 designate a position of acquisition program executive offi-
22 cer to carry a grade above brigadier general or rear admi-
23 ral (lower half) only when the President or Secretary, as
24 the case may be, determines that the member serving in

1 that position has performed the duties of the position of
2 an acquisition program executive officer with distinction.

3 “(2) Notwithstanding any other provision of law
4 (other than a provision of law limiting the number of posi-
5 tions or personnel in a certain grade), the Secretary of
6 Defense may fix the civilian grade of a position of acquisi-
7 tion program executive officer at a civilian equivalent of
8 a grade referred to in paragraph (1). The Secretary shall
9 fix the civilian grade for the position of a particular em-
10 ployee at a grade above the civilian equivalent of brigadier
11 general or rear admiral (lower half) only if the Secretary
12 determines that the employee serving in that position has
13 performed the duties of the position of an acquisition pro-
14 gram executive officer with distinction.

15 “(b) ACQUISITION PROGRAM MANAGER.—(1)(A) The
16 position of acquisition program manager carries the grade
17 of colonel, brigadier general, or major general, or, in the
18 case of the Navy, captain, rear admiral (lower half), or
19 rear admiral, as the Secretary of Defense determines ap-
20 propriate.

21 “(B) The Secretary of Defense may designate a posi-
22 tion of acquisition program manager to carry a grade
23 above colonel or (in the case of the Navy) captain only
24 when the Secretary determines that the member serving

1 in that position has performed the duties of the position
2 of an acquisition program manager with distinction.

3 “(2) Notwithstanding any other provision of law
4 (other than a provision of law limiting the number of posi-
5 tions or personnel in a certain grade), the Secretary of
6 Defense may fix the civilian grade of the position of civil-
7 ian acquisition program manager at a civilian equivalent
8 of a grade referred to in paragraph (1). The Secretary
9 shall fix the civilian grade for the position of a particular
10 employee at a grade above the civilian equivalent of colonel
11 or (in the case of the Navy) captain only if the Secretary
12 determines that the employee serving in that position has
13 performed the duties of the position of an acquisition pro-
14 gram executive officer with distinction.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions at the beginning of such subchapter is amend-
17 ed by striking out the items relating to sections
18 1736 and 1737 and inserting in lieu thereof the fol-
19 lowing:

“1736. Grade of certain acquisition managers.

“1737. Applicability.

“1738. Definitions and general provisions.”.

20 (c) PAY FOR PERFORMANCE IN ACQUISITION POSI-
21 TIONS.—

22 (1) IN GENERAL.—Subchapter II of chapter 87
23 of title 10, United States Code, is amended—

1 (A) by redesignating sections 1725 as
2 1726; and

3 (B) by inserting after section 1724 the fol-
4 lowing new section 1725:

5 **“§ 1725. Pay for performance**

6 “(a) PAY RATES.—(1) The Secretary of Defense may
7 provide for the pay rate of an employee in an acquisition
8 position within the Department of Defense to be based,
9 to an appropriate extent, on specific criteria that relates
10 the pay rate of such employee to the employee’s contribu-
11 tion to the achievement of the policy goals set forth in
12 section 2301(e)(1) of this title and performance goals ap-
13 proved or defined in accordance with section 2219(b) of
14 this title.

15 “(2) A pay rate established pursuant to paragraph
16 (1) for an employee in a position referred to in that sub-
17 section may not exceed the lesser of—

18 “(A) the amount equal to 130 percent of the
19 maximum pay rate prescribed under law (other than
20 paragraph (1)) for the grade or other pay level of
21 that position; or

22 “(B) the rate of basic pay payable for level V
23 of the Executive Schedule.

24 “(b) RELATIONSHIP OF PERSONNEL BUDGET TO
25 ACHIEVEMENT OF GOALS.—The Secretary of Defense, in

1 approving or formulating the personnel budget of a mili-
 2 tary department or Defense Agency for a fiscal year, shall
 3 consider whether increased funding is appropriate on the
 4 basis of the achievement by the military department or
 5 Defense Agency of the schedule, performance, and cost
 6 goals for acquisition programs of the Department of De-
 7 fense referred to in section 2301(e)(1) of this title.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
 9 tions at the beginning of such subchapter is amend-
 10 ed by striking out the item relating to section 1725
 11 and inserting in lieu thereof the following:

“1725. Pay for performance.

“1726. Office of Personnel Management approval.”.

12 **SEC. 203. PROGRAM MANAGEMENT STABILITY.**

13 (a) ASSIGNMENT PERIOD FOR PROGRAM MAN-
 14 AGERS.—Section 1734 of title 10, United States Code, is
 15 amended—

16 (1) in subsection (b)—

17 (A) in paragraph (1)—

18 (i) by striking out “the major mile-
 19 stone” in subparagraph (A) and all that
 20 follows through the semicolon in such sub-
 21 paragraph and inserting in lieu thereof “a
 22 phase in the acquisition program cycle;”;
 23 and

1 (ii) by striking out the second sen-
2 tence and inserting in lieu thereof the fol-
3 lowing:

4 “Except as provided in subsection (c), a person in the po-
5 sition of program manager or deputy program manager
6 may not be reassigned from such position before comple-
7 tion of a phase in the acquisition program cycle.”; and

8 (B) in paragraph (2)—

9 (i) in the first sentence, by striking
10 out “the first major milestone” and all
11 that follows in the first sentence and in-
12 serting in lieu thereof “a phase of the ac-
13 quisition program cycle.”; and

14 (ii) in the second sentence, by striking
15 out “Secretary concerned under subsection
16 (d)” and inserting in lieu thereof “Sec-
17 retary of Defense under subsection (c)”;
18 and

19 (2) by striking out subsection (c).

20 (b) WAIVER AUTHORITY.—Such section is further
21 amended by striking out subsection (d) and inserting in
22 lieu thereof the following:

23 “(c) WAIVER OF ASSIGNMENT PERIOD.—(1) With re-
24 spect to a person assigned to a critical acquisition position,
25 the Secretary of Defense may waive the prohibition on re-

1 assignment of that person (in subsection (a)(1) or (b)(1))
2 and the service obligation in an agreement executed by
3 that person (under subsection (a)(2) or (b)(2)), but only
4 in exceptional circumstances (specified in regulations pre-
5 scribed by the Secretary) in which a waiver is necessary.

6 “(2) The Director of Acquisition Education, Train-
7 ing, and Career Development shall maintain a written
8 record of the rationale for each waiver granted under this
9 subsection.”.

10 (c) CONFORMING AMENDMENTS AND DEFINITION.—

11 Such section is further amended—

12 (1) by redesignating subsection (e) as sub-
13 section (d); and—

14 (A) in paragraph (1) of such subsection,
15 by striking out “a program manager, after com-
16 pletion of a major program milestone, whichever
17 is longer” in the first sentence and inserting in
18 lieu thereof “a program manager or deputy pro-
19 gram manager, after completion of a phase of
20 the acquisition program cycle”; and

21 (B) in paragraph (2) of such subsection,
22 by striking out “of the department concerned”
23 in the first sentence;

24 (2) by redesignating subsection (f) as sub-
25 section (e); and

1 (3) by striking out subsections (g) and (h) and
2 inserting in lieu thereof the following:

3 “(f) In this section, the term ‘phase of an acquisition
4 program cycle’ shall have the meaning given such term
5 in the regulations prescribed pursuant to section 2220 of
6 this title.”.

7 **Subtitle B—Civilian Agency**
8 **Acquisitions**

9 **SEC. 211. POLICY REGARDING TRAINING OF FEDERAL AC-**
10 **QUISITION WORKFORCE.**

11 The head of each department or agency of the Fed-
12 eral Government should ensure that the acquisition
13 workforce of the department or agency is trained to per-
14 form effectively and efficiently the acquisition functions of
15 the Federal Government.

16 **SEC. 212. ACQUISITION WORKFORCE MANAGEMENT SYS-**
17 **TEM.**

18 (a) REQUIREMENT FOR SYSTEM.—The head of each
19 department or agency in the executive branch shall, on an
20 expedited basis, establish policies and procedures for the
21 effective management (including accession, education,
22 training, and career development) of persons serving in
23 acquisition positions in the department or agency.

24 (b) SIMILARITY TO DEFENSE ACQUISITION
25 WORKFORCE SYSTEM.—To the maximum extent prac-

1 ticable, the department or agency head shall replicate
2 within the department or agency the acquisition workforce
3 policies and procedures that are set forth in and imple-
4 mented under the provisions of chapter 87 of title 10,
5 United States Code, relating to the acquisition workforce
6 of the Department of Defense.

7 (c) AUTHORITY.—The head of a department or agen-
8 cy referred to in subsection (a) may exercise the same au-
9 thority with respect to the acquisition workforce of that
10 department or agency as the Secretary of Defense or any
11 other official within the Department of Defense may exer-
12 cise with respect to the defense acquisition workforce
13 under the provisions of chapter 87 of title 10, United
14 States Code.

15 (d) NONDUPLICATION OF REQUIREMENTS AND AU-
16 THORITY.—This section does not apply to the Department
17 of Defense.

18 **SEC. 213. ENHANCED ENCOURAGEMENT OF EXCELLENCE**

19 **IN THE FEDERAL ACQUISITION WORKFORCE.**

20 (a) ENHANCED SYSTEM OF INCENTIVES AND AD-
21 VERSE ACTIONS.—The head of each department or agency
22 in the executive branch shall review the incentives and per-
23 sonnel actions available to such official for encouraging
24 excellence in the acquisition workforce of that department
25 or agency and, to the maximum extent practicable, provide

1 an enhanced system of incentives for the encouragement
2 of excellence in such workforce. The enhanced system
3 shall—

4 (1) in accordance with applicable law, relate
5 pay to performance; and

6 (2) provide for consideration of the extent to
7 which the performance of personnel in such
8 workforce contributes to the achievement of cost
9 goals, schedule goals, and performance goals estab-
10 lished for acquisition programs of the department or
11 agency.

12 (b) INCREASED GRADES FOR CERTAIN ACQUISITION
13 MANAGERS.—

14 (1) CONSIDERATION REQUIRED.—The head of
15 each department or agency in the executive branch
16 shall specifically consider whether the grade of the
17 position of any acquisition program manager should
18 be increased.

19 (2) APPLICABLE CRITERIA AND LIMITS.—In
20 carrying out paragraph (1), the department or agen-
21 cy head shall apply the same criteria and limits as
22 apply to civilian personnel of the defense acquisition
23 workforce under section 1736 of title 10, United
24 States Code (as added by section 202(b)).

1 (c) INCENTIVES FOR TECHNICAL SPECIALISTS.—The
2 head of each department or agency in the executive branch
3 shall prescribe in regulations a system of incentives for
4 encouraging professional excellence among the technical
5 specialists in that department or agency who support ac-
6 quisitions of the department or agency.

7 **SEC. 214. INAPPLICABILITY TO DEPARTMENT OF DEFENSE.**

8 This subtitle does not apply to the Department of De-
9 fense.

10 **TITLE III—ORGANIZATION OF**
11 **THE ACQUISITION PROCESS**
12 **Subtitle A—Armed Services**
13 **Procurements**

14 **SEC. 301. REORGANIZATION OF ACQUISITION AUTHORITY.**

15 (a) UNDER SECRETARY OF DEFENSE FOR ACQUI-
16 TION.—Section 133(b) of title 10, United States Code, is
17 amended—

18 (1) by redesignating paragraphs (3) and (4) as
19 paragraphs (4) and (5), respectively; and

20 (2) by striking out paragraphs (1) and (2) and
21 inserting in lieu thereof the following:

22 “(1) prescribing policies for research, develop-
23 ment, and acquisition activities of the Department of
24 Defense;

1 “(2) planning, programming, and overseeing
2 the research, development, and acquisition activities
3 of the Department of Defense;

4 “(3) assisting in the preparation and integra-
5 tion of budgets for the research, development, and
6 acquisition activities of the Department of Defense,
7 including assisting in the planning, programming,
8 and budgeting system with respect to such activi-
9 ties;”.

10 (b) DEFENSE RESEARCH, DEVELOPMENT, AND AC-
11 QUISITION AGENCY.—

12 (1) ESTABLISHMENT.—Part I of subtitle A of
13 title 10, United States Code, is amended by insert-
14 ing after chapter 9 the following new chapter:

15 **“CHAPTER 10—DEFENSE RESEARCH, DE-**
16 **VELOPMENT, AND ACQUISITION AGEN-**
17 **CY**

“Sec.

“231. Establishment.

“232. Use of agency for all research, development, and acquisition activities.

“233. Duties.

“234. Program executive officers.

“235. Program managers.

“236. Functional analytical capability.

18 **“§ 231. Establishment**

19 “(a) AGENCY.—There is established a Defense Re-
20 search, Development, and Acquisition Agency in the De-
21 partment of Defense.

1 “(b) DIRECTOR.—(1) The head of the agency is the
2 Director of Defense Research, Development, and Acquisi-
3 tion who shall be appointed by the Under Secretary of De-
4 fense for Acquisition from among persons who are career
5 professional employees in the acquisition workforce of any
6 Federal agency.

7 “(2) A member of the armed forces, while serving as
8 the Director, holds the grade of general or, in the case
9 of an officer of the Navy, admiral. A civilian, while serving
10 as the Director, holds an equivalent civilian grade.

11 “(c) CHIEF OF ENGINEERING AND ANALYSIS.—(1)
12 In the Defense Research, Development, and Acquisition
13 Agency there is a Chief of Engineering and Analysis who
14 shall be appointed by the Director from among the career
15 professional employees in the acquisition workforce of the
16 Department of Defense.

17 “(2) The Director shall evaluate the performance of
18 the Chief of Engineering and Analysis. The Director may
19 not delegate the performance of the evaluation responsibil-
20 ity.

21 “(3) The Chief of Engineering and Analysis shall be
22 the senior technical adviser for the Defense Research, De-
23 velopment, and Acquisition Agency.

1 **“§ 232. Use of agency for all research, development,**
2 **and acquisition activities**

3 “Subject to sections 3013(h), 5013(h), 8013(h) of
4 this title, the Director shall conduct the research, develop-
5 ment, and acquisition activities of the Department of De-
6 fense, including the activities of the research, development,
7 and engineering centers of the Department of Defense.

8 **“§ 233. Duties**

9 “The responsibilities of the Under Secretary of De-
10 fense for Acquisition that are to be performed by the De-
11 fense Research, Development, and Acquisition Agency in-
12 clude the following:

13 “(1) Planning, programming, and carrying out
14 the research, development, and acquisition activities
15 of the Department of Defense.

16 “(2) Advising the Secretary of Defense and the
17 Secretaries of the military departments regarding
18 the preparation and integration of the budgets for
19 the research, development, and acquisition activities
20 of the Department of Defense.

21 “(3) Identifying and informing operational com-
22 manders regarding alternative technology solutions
23 to fulfill emerging requirements.

24 “(4) Ensuring that the acquisition plan for
25 each acquisition program realistically reflects the
26 budget and related decisions made for that program.

1 “(5) Conducting research on management tech-
2 niques as well as on individual systems.

3 **“§ 234. Program executive officers**

4 “(a) SELECTION AND EVALUATION.—The program
5 executive officers of the Defense Research, Development,
6 and Acquisition Agency shall be selected and evaluated by
7 the Director.

8 “(b) DUTIES.—The duties of a program executive of-
9 ficer are as follows:

10 “(1) To manage acquisition programs assigned
11 to the program executive officer.

12 “(2) To manage related technical support re-
13 sources.

14 “(3) To establish and conduct integrated deci-
15 sion team meetings.

16 “(4) To provide technological advice (including
17 advice regarding costs, schedule, and performance
18 data relating to alternative technological approaches
19 for fulfilling emerging requirements) to users of pro-
20 gram products and to the officials within the De-
21 partment of Defense who plan, program, and budget
22 for the acquisition programs assigned to the pro-
23 gram executive officer.

24 “(c) ORGANIZATION OF PERSONNEL.—The program
25 executive officers shall be organized on the basis of unique

1 mission areas or, in the case of programs for systems spe-
2 cifically relating to certain classes of targets, on the basis
3 of target classes. No program executive officer may be or-
4 ganized with other program executive officers on both
5 bases. The Secretary of Defense shall identify the mission
6 areas or target classes on the basis of which program exec-
7 utive officers may be organized.

8 “(d) ACQUISITION LIFE-CYCLE MANAGEMENT.—The
9 responsibilities of a program executive officer for a weapon
10 acquisition program shall cover the entire life cycle of the
11 program.

12 “(e) USER AND OPERATOR INTERACTION.—(1) The
13 Chairman of the Joint Chiefs of Staff, in consultation with
14 the Under Secretary of Defense for Acquisition, shall pre-
15 scribe policies and procedures for the interaction of the
16 commanders of the unified and specified combatant com-
17 mands with program executive officers regarding the initi-
18 ation and conduct of weapon acquisition programs. The
19 policies and procedures shall include provisions for ena-
20 bling such commands to perform operational and accept-
21 ance testing of weapons acquired pursuant to such pro-
22 grams.

23 “(2) The Comptroller of the Department of Defense,
24 in consultation with the Under Secretary of Defense for
25 Acquisition and the Secretaries of the military depart-

1 ments, shall prescribe policies and procedures for the
2 interaction between the commanders of the unified and
3 specified combatant commands and the program executive
4 officers regarding funding for weapon acquisition pro-
5 grams.

6 **“§ 235. Program managers**

7 “(a) SELECTION AND EVALUATION.—Each program
8 manager of the Defense Research, Development, and Ac-
9 quisition Agency shall be selected and evaluated by the
10 Director and a program executive officer and shall report
11 directly to the program executive officer having primary
12 responsibility for the system being acquired under the pro-
13 gram.

14 “(b) DUTIES.—A program manager is responsible for
15 the routine management of a research, development, and
16 acquisition program, including the obtaining of necessary
17 logistical support and support services for that program.

18 “(c) RELATIONSHIP TO PROGRAM EXECUTIVE OFFI-
19 CERS.—The management functions of a program manager
20 should not duplicate the management functions of a pro-
21 gram executive officer.

22 **“§ 236. Functional analytical capability**

23 “(a) RESPONSIBILITY OF CHIEF OF ENGINEERING
24 AND ANALYSIS.—The Chief of Engineering and Analysis
25 shall be responsible for ensuring that each of the func-

1 tional analytical capabilities provided to the Director, ac-
 2 quisition program executive officers, and acquisition pro-
 3 gram managers in connection with acquisition programs
 4 of the Department of Defense is the most advanced capa-
 5 bility of its type.

6 “(b) FUNCTIONAL ANALYTICAL CAPABILITIES.—The
 7 functional analytical capabilities referred to in subsection
 8 (a) are as follows:

9 “(1) Cost and affordability analysis.

10 “(2) Logistics and support analysis.

11 “(3) Reliability and maintainability analysis.

12 “(4) Producibility analysis.

13 “(5) Environmental analysis.

14 “(6) Configuration management.

15 “(7) Warfighting and battlefield performance
 16 and utility analysis.

17 “(8) System engineering.

18 “(9) Any other analytical capability that may
 19 be necessary for ensuring the timeliness, perform-
 20 ance, and affordability of acquisition programs.”.

21 (2) CLERICAL AMENDMENT.—The tables of
 22 chapters at the beginning of subtitle A of title 10,
 23 United States Code, and at the beginning of part I
 24 of such subtitle, are amended by inserting after the
 25 item relating to chapter 9 the following new item:

“10. Defense Research, Development, and Acquisition Agency 231”.

1 (c) LIMITATION OF PROCUREMENT AUTHORITY OF
2 MILITARY DEPARTMENTS.—

3 (1) ARMY.—Section 3013 of title 10, United
4 States Code, is amended—

5 (A) in subsection (b)—

6 (i) by striking out “and subject to the
7 provisions of chapter 6” and inserting in
8 lieu thereof “, subject to the provisions of
9 chapter 6, and subject to subsection (h),”;
10 and

11 (ii) in paragraph (4), by striking out
12 “(including research and development)”;
13 and

14 (B) by adding at the end the following new
15 subsection:

16 “(h)(1) The Secretary of the Army shall be respon-
17 sible for procurements of property and services, and may
18 exercise authority to conduct such procurements, only to
19 the extent that the Secretary of Defense determines nec-
20 essary for the sustainment of operations of the Army. The
21 Secretary of Defense shall prescribe in regulations the ex-
22 tent of the responsibility and authority of the Secretary
23 of the Army for procurements of property and services.

24 “(2) In conducting a procurement in accordance with
25 paragraph (1), the Secretary of the Army shall be subject

1 to the same laws as are applicable to acquisitions con-
2 ducted by the Secretary of Defense.”.

3 (2) NAVY.—Section 5013 of title 10, United
4 States Code, is amended—

5 (A) in subsection (b)—

6 (i) by striking out “and subject to the
7 provisions of chapter 6” and inserting in
8 lieu thereof “, subject to the provisions of
9 chapter 6, and subject to subsection (h),”;
10 and

11 (ii) in paragraph (4), by striking out
12 “(including research and development)”;
13 and

14 (B) by adding at the end the following new
15 subsection:

16 “(h)(1) The Secretary of the Navy shall be respon-
17 sible for procurements of property and services, and may
18 exercise authority to conduct such procurements, only to
19 the extent that the Secretary of Defense determines nec-
20 essary for the sustainment of operations of the Navy. The
21 Secretary of Defense shall prescribe in regulations the ex-
22 tent of the responsibility and authority of the Secretary
23 of the Navy for procurements of property and services.

24 “(2) In conducting a procurement in accordance with
25 paragraph (1), the Secretary of the Navy shall be subject

1 to the same laws as are applicable to acquisitions con-
2 ducted by the Secretary of Defense.”.

3 (3) AIR FORCE.—Section 8013 of title 10, Unit-
4 ed States Code, is amended—

5 (A) in subsection (b)—

6 (i) by striking out “and subject to the
7 provisions of chapter 6” and inserting in
8 lieu thereof “, subject to the provisions of
9 chapter 6, and subject to subsection (h),”;
10 and

11 (ii) in paragraph (4), by striking out
12 “(including research and development)”;
13 and

14 (B) by adding at the end the following new
15 subsection:

16 “(h)(1) The Secretary of the Air Force shall be re-
17 sponsible for procurements of property and services, and
18 may exercise authority to conduct such procurements, only
19 to the extent that the Secretary of Defense determines
20 necessary for the sustainment of operations of the Air
21 Force. The Secretary of Defense shall prescribe in regula-
22 tions the extent of the responsibility and authority of the
23 Secretary of the Air Force for procurements of property
24 and services.

1 “(2) In conducting a procurement in accordance with
2 paragraph (1), the Secretary of the Air Force shall be sub-
3 ject to the same laws as are applicable to acquisitions con-
4 ducted by the Secretary of Defense.”.

5 (4) Section 2302(1) of title 10, United States Code,
6 is amended by striking out “the Secretary of the Army,
7 the Secretary of the Navy, the Secretary of the Air
8 Force,”.

9 (d) TRANSFER OF FUNCTIONS.—

10 (1) MILITARY DEPARTMENTS.—Except as pro-
11 vided in paragraph (3), all research, development,
12 and acquisition functions of the Secretaries of the
13 military departments are transferred to the Sec-
14 retary of Defense.

15 (2) PROCUREMENT AGENCIES, COMMANDS, AND
16 OFFICES.—Except as provided in paragraph (3),
17 there is transferred to the Defense Research, Devel-
18 opment, and Acquisition Agency referred to in sec-
19 tion 231(a) of title 10, United States Code (as
20 added by subsection (b)), all functions of the follow-
21 ing organizations:

22 (A) The Defense Logistics Agency.

23 (B) The Advanced Research Projects
24 Agency.

1 (C) The following procurement commands
2 of the Army:

3 (i) The Army Materiel Command.

4 (ii) The Army Information Systems
5 Command.

6 (iii) The Army Strategic Defense
7 Command.

8 (D) The following procurement commands
9 of the Navy and Marine Corps:

10 (i) The Navy weapons systems com-
11 mands.

12 (ii) The Navy Strategic Systems Pro-
13 gram Office.

14 (iii) The Marine Corps Research, De-
15 velopment and Acquisition Command.

16 (E) The Air Force Materiel Command.

17 (F) Any successor organization to any
18 agency, command, or office named in subpara-
19 graphs (A) through (E).

20 (G) Each agency or command within the
21 Department of Defense not referred to in sub-
22 paragraphs (A) through (F) that, on the day
23 before the effective date of this section, has as
24 a primary mission or function the performance

1 of a research, development, or acquisition func-
2 tion of the Department of Defense.

3 (3) EXCEPTIONS TO TRANSFER REQUIRE-
4 MENT.—

5 (A) IN GENERAL.—The following functions
6 of the Secretaries of the military departments
7 are not transferred to the Secretary of Defense:

8 (i) Functions that relate to planning,
9 programming, and budgeting.

10 (ii) Functions to be performed by the
11 Secretary of a military department pursu-
12 ant to section 3013(h), 5013(h), or
13 8013(h) of title 10, United States Code, as
14 added by subsection (c).

15 (B) DISCRETIONARY EXCEPTION.—To the
16 extent prescribed by the Secretary of Defense,
17 functions referred to in subparagraph (A)(ii)
18 that are performed by an organization referred
19 to in paragraph (2) need not be transferred in
20 accordance with that paragraph.

21 (4) TERMINATION OF ORGANIZATION.—The
22 Secretary of Defense shall terminate each organiza-
23 tion from which all of its functions are transferred
24 in accordance with this subsection.

25 (e) SAVINGS PROVISIONS.—

1 (1) REGULATIONS, INSTRUMENTS, RIGHTS, AND
2 PRIVILEGES.—All rules, regulations, contracts, or-
3 ders, determinations, permits, certificates, licenses,
4 grants, and privileges—

5 (A) which have been issued, made, grant-
6 ed, or allowed to become effective by the Sec-
7 retary or other officer or employee of a military
8 department, the head of a Defense Agency of
9 the Department of Defense, or by a court of
10 competent jurisdiction, in connection with any
11 research, development, or acquisition activity of
12 a military department or Defense Agency, and

13 (B) which are in effect on the effective
14 date of this section,

15 shall continue in effect according to their terms until
16 modified, terminated, superseded, set aside, or re-
17 voked in accordance with law by the Secretary of
18 Defense, the Under Secretary of Defense for Acqui-
19 sition, or another authorized official, by a court of
20 competent jurisdiction, or by operation of law.

21 (2) PROCEEDINGS.—

22 (A) PROCEEDINGS NOT AFFECTED.—The
23 provisions of this section shall not affect any
24 proceeding, including any proceeding involving
25 a claim or application, in connection with any

1 acquisition activity of a military department or
2 a Defense Agency of the Department of De-
3 fense that is pending before that military de-
4 partment or Defense Agency on the effective
5 date of this section.

6 (B) ORDERS.—Orders may be issued in
7 any such proceeding, appeals may be taken
8 therefrom, and payments may be made pursu-
9 ant to such orders, as if this section had not
10 been enacted. An order issued in any such pro-
11 ceeding shall continue in effect until modified,
12 terminated, superseded, or revoked by the Sec-
13 retary of Defense or the Under Secretary of
14 Defense for Acquisition, by a court of com-
15 petent jurisdiction, or by operation of law.

16 (C) RULE OF CONSTRUCTION.—Nothing in
17 this paragraph prohibits the discontinuance or
18 modification of any such proceeding under the
19 same terms and conditions and to the same ex-
20 tent that such proceeding could have been dis-
21 continued or modified if this section had not
22 been enacted.

23 (3) REGULATIONS.—The Secretary of Defense
24 may prescribe regulations providing for the orderly
25 transfer of proceedings continued under paragraph

1 (2) to the Secretary of Defense or to the Under Sec-
2 retary of Defense for Acquisition.

3 **SEC. 302. PHASE FUNDING AND REVIEW OF DEFENSE AC-**
4 **QUISITION PROGRAMS.**

5 (a) IN GENERAL.—Chapter 131 of title 10, United
6 States Code, as amended by section 102(b), is further
7 amended by adding at the end the following new sections:

8 **“§ 2220. Results oriented acquisition program cycle**

9 “The Secretary of Defense shall define in regulations
10 a simplified acquisition program cycle that is results-ori-
11 ented and consists of the following phases:

12 “(1) The integrated decision team meeting
13 which—

14 “(A) may be requested by a potential user
15 of the system or component to be acquired, the
16 head of a laboratory, or a program office on
17 such bases as the emergence of a new military
18 requirement, cost savings opportunity, or new
19 technology opportunity;

20 “(B) shall be conducted by a program ex-
21 ecutive officer; and

22 “(C) shall usually be completed within 1 to
23 3 months.

24 “(2) The prototype development and testing
25 phase which—

1 “(A) shall include operational tests and
2 concerns relating to manufacturing operations
3 and life cycle support;

4 “(B) shall usually be completed within 6 to
5 36 months; and

6 “(C) shall produce sufficient numbers of
7 prototypes to assess operational utility.

8 “(3) Product integration, development, and
9 testing which—

10 “(A) includes full-scale development, oper-
11 ational testing, and integration of components;
12 and

13 “(B) shall usually be completed within 1 to
14 5 years.

15 “(4) Production, integration into existing sys-
16 tems, or production and integration into existing
17 systems.

18 **“§ 2221. Funding for results oriented acquisition pro-**
19 **gram cycle**

20 “(a) PROGRAM PHASE DETAILS TO BE SUBMITTED
21 TO CONGRESS.—Before initial funding is made available
22 for a phase of the acquisition program cycle of an acquisi-
23 tion program which requires congressional authorization
24 of appropriations, the Secretary of Defense shall submit
25 to Congress information about the objectives and plans for

1 the conduct of that phase and the funding requirements
2 for the entire phase. The Secretary shall include in such
3 information objective, quantifiable criteria for assessing
4 the extent to which the stated objectives and goals are
5 achieved.

6 “(b) FULL PHASE FUNDING.—(1) In authorizing ap-
7 propriations for an acquisition program that requires con-
8 gressional authorization, Congress shall provide in an Act
9 authorizing appropriations for the Department of Defense
10 an authorization of appropriations for a phase of the ac-
11 quisition program in a single amount that is sufficient for
12 carrying out that phase. Such an authorization of appro-
13 priations shall be stated in the Act as a specific item.

14 “(2) In each Act making appropriations for the De-
15 partment of Defense Congress shall specify the phase of
16 each such acquisition program of the department for
17 which an appropriation is made and the amount of the
18 appropriation for the phase of that program.

19 **“§ 2222. Major program decision**

20 “(a) SINGLE MAJOR DECISION POINT.—The acquisi-
21 tion program approval process within the Department of
22 Defense shall have one major decision point which shall
23 occur for an acquisition program before that program pro-
24 ceeds into product integration and development.

1 “(b) DETERMINATIONS AT DECISION POINT.—At the
 2 major decision point for an acquisition program, the
 3 Under Secretary of Defense for Acquisition in consultation
 4 with the Vice Chairman Joint Chief of Staff shall—

5 “(1) review the program;

6 “(2) determine whether the program should
 7 continue to be carried out beyond product integra-
 8 tion and development; and

9 “(3) decide whether—

10 “(A) to commit to further development;

11 “(B) to require further prototyping; or

12 “(C) to terminate the program.

13 “(c) CONSIDERATIONS.—In the review of an acquisi-
 14 tion program, the Under Secretary shall consider the po-
 15 tential benefits, affordability, needs, and risks of the pro-
 16 gram.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
 18 at the beginning of chapter 131 of title 10, United States
 19 Code, as amended by section 102(b), is further amended
 20 by adding at the end the following new items:

“2220. Results oriented acquisition program cycle.

“2221. Funding for results oriented acquisition program cycle.

“2222. Major program decision.”.

21 **Subtitle B—Civilian Agency**
 22 **Acquisitions**

23 **SEC. 311. CUSTOMER-DRIVEN ACQUISITIONS.**

24 It is the policy of Congress that—

1 (1) the purpose for initiating, planning, and
2 executing acquisitions of property or services by the
3 Federal Government be to satisfy the needs of the
4 potential users of such property or services; and

5 (2) potential users of the property or services
6 be involved to a significant extent in the initiation,
7 planning, and execution of the acquisitions of such
8 property or services by the Federal Government.

9 **SEC. 312. REVIEW OF AGENCY ORGANIZATION FOR ACQUI-**
10 **SITIONS.**

11 (a) INSPECTOR GENERAL REVIEW OF MANAGEMENT
12 STRUCTURE.—Not later than 18 months after the date
13 of the enactment of this Act, the Inspector General of each
14 department or agency of the executive branch shall—

15 (1) review the acquisition process in the depart-
16 ment or agency in order to identify each, if any,
17 management organization or position involved in the
18 process that does not contribute to—

19 (A) the efficiency of the acquisition proc-
20 ess; or

21 (B) the quality and cost-effectiveness of
22 items acquired; and

23 (2) submit to Congress a report containing—

24 (A) the findings of the Inspector General
25 that result from the review; and

1 (B) any recommendations for reorganizing
2 the acquisition management structure of the de-
3 partment or agency to ensure that each organi-
4 zation and position involved in the management
5 of acquisitions is valuable to the acquisition
6 process because of contributions to the process
7 as described in paragraph (1).

8 (b) AGENCIES WITHOUT INSPECTORS GENERAL.—In
9 the case of a department or agency that does not have
10 an Inspector General, the head of the department or agen-
11 cy shall carry out the review, and submit the report, re-
12 quired by subsection (a)(2).

13 **SEC. 313. ACQUISITION OF NONCOMMERCIAL ITEMS.**

14 (a) RESULTS-ORIENTED PROCESS REQUIRED.—The
15 head of each department or agency of the executive branch
16 shall develop and implement a results-oriented acquisition
17 process for acquisitions of property and services by the
18 department or agency. The process shall include the iden-
19 tification of quantitative measures and standards for de-
20 termining the extent to which an acquisition of non-
21 commercial items by the department or agency satisfies
22 the needs for which the items are being acquired.

23 (b) DEFINITIONS.—In this section:

1 (1) NONCOMMERCIAL ITEM.—The term “non-
2 commercial item” means an item that is not a com-
3 mercial item.

4 (2) COMMERCIAL ITEM.—The term “commer-
5 cial item” means—

6 (A) property, other than real property,
7 that is of a type regularly used by the general
8 public or by nongovernmental entities in the
9 course of normal business operations for pur-
10 poses other than governmental purposes and—

11 (i) has been sold or licensed to the
12 general public;

13 (ii) has not been sold or licensed to
14 the general public but has been offered for
15 sale or license to the general public; or

16 (iii) is not yet available in the com-
17 mercial marketplace but will be made
18 available for commercial delivery within a
19 reasonable period;

20 (B) any item that, but for minor modifica-
21 tions made to meet Federal Government re-
22 quirements or modifications of a type customar-
23 ily available in the commercial marketplace,
24 would satisfy the criteria in subparagraph (A);

1 (C) any combination of items meeting the
2 requirements of subparagraph (A) or (B) that
3 are of a type customarily combined and sold in
4 combination to the general public; and

5 (D) installation services, maintenance serv-
6 ices, repair services, training services, and other
7 services if such services are procured for sup-
8 port of an item referred to in subparagraph
9 (A), (B), or (C) and if the source of such serv-
10 ices—

11 (i) offers such services to the general
12 public and the Federal Government con-
13 temporaneously and under similar terms
14 and conditions; and

15 (ii) offers to use the same work force
16 for providing the Federal Government with
17 such services as the source uses for provid-
18 ing such services to the general public.

19 **SEC. 314. INAPPLICABILITY TO DEPARTMENT OF DEFENSE.**

20 This subtitle does not apply to the Department of De-
21 fense.

1 **TITLE IV—CONTRACT**
2 **FORMATION**
3 **Subtitle A—Specifications and**
4 **Standards**

5 **SEC. 401. PREFERENCE FOR COMMERCIAL ITEMS.**

6 (a) ARMED SERVICES ACQUISITIONS.—Section
7 2305(a)(1)(C) of title 10, United States Code, is amended
8 in the second sentence by striking out “Subject to such
9 needs, specifications may” and inserting in lieu thereof the
10 following: “Normally, the specifications shall be the speci-
11 fications of commercial items. When such items cannot
12 meet bona fide needs of the Department of Defense, speci-
13 fications shall”.

14 (b) CIVILIAN AGENCY ACQUISITIONS.—Section
15 303A(a)(3) of the Federal Property and Administrative
16 Services Act of 1949 (41 U.S.C. 253a(a)(3)) is amended
17 in the second sentence by striking out “Subject to such
18 needs, specifications may” and inserting in lieu thereof the
19 following: “Normally, the specifications shall be the speci-
20 fications of commercial items. When such items cannot
21 meet bona fide needs of the executive agency, specifica-
22 tions shall”.

1 **Subtitle B—Performance-Based**
2 **Contracting**

3 **SEC. 411. USE OF INCENTIVE CONTRACTS.**

4 (a) ARMED SERVICES ACQUISITIONS.—Subsection
5 (c) of section 2306 of title 10, United States Code, is
6 amended to read as follows:

7 “(c) The program executive officer of an acquisition
8 program may determine the type of contract to be used
9 when entering into a contract under the program. The
10 program executive officer shall use an incentive type con-
11 tract unless the program executive officer determines that
12 such a contract would inhibit achievement of acquisition
13 performance goals.”.

14 (b) CIVILIAN AGENCY ACQUISITIONS.—Section
15 304(b) of the Federal Property and Administrative Serv-
16 ices Act of 1949 (41 U.S.C. 254(b)) is amended by strik-
17 ing out the second sentence and inserting in lieu thereof
18 the following: “The program manager of an acquisition
19 program may determine the type of contract to be used
20 when entering into a contract under the program. The
21 program manager shall use an incentive type contract un-
22 less the program manager determines that such a contract
23 would inhibit achievement of acquisition performance
24 goals.”.

1 **SEC. 412. GUIDANCE REGARDING CONSIDERATION OF PAST**
2 **CONTRACT PERFORMANCE OF OFFERORS.**

3 Section 6 of the Office of Federal Procurement Policy
4 (41 U.S.C. 405) is amended by adding at the end the fol-
5 lowing:

6 “(j)(1) Congress makes the following findings:

7 “(A) Past contract performance of an offeror is
8 one of the relevant factors that contracting officials
9 of executive agencies should consider in entering into
10 contracts.

11 “(B) It is appropriate for a contracting official
12 to consider past contract performance of an offeror
13 as an indicator of the likelihood that the offeror will
14 successfully perform a contract to be entered into by
15 that official.

16 “(2) The Administrator shall prescribe for executive
17 agencies guidance regarding consideration of the past con-
18 tract performance of offerors in awarding contracts. The
19 guidance shall include—

20 “(A) standards for evaluating past performance
21 that facilitate consistent and fair evaluation by all
22 executive agencies;

23 “(B) policies for the collection and maintenance
24 of information on past contract performance that, to
25 the maximum extent practicable, facilitate auto-
26 mated collection, maintenance, and dissemination of

1 information and provide for ease of collection, main-
2 tenance, and dissemination of information by other
3 methods, as necessary; and

4 “(C) policies for ensuring that offerors are af-
5 farded an opportunity to submit information on past
6 contract performance and that information submit-
7 ted by offerors is considered.

8 “(3) The Administrator shall prescribe for all execu-
9 tive agencies the policy regarding the period for which in-
10 formation on past performance of offerors may be main-
11 tained and considered.

12 “(4) In the case of an offeror regarding whom there
13 is no information on past contract performance or regard-
14 ing whom information on past contract performance is not
15 available, the offeror may not be evaluated favorably or
16 unfavorably on the factor of past contract performance.

17 “(5) In evaluating past contract performance of an
18 offeror under the guidance prescribed pursuant to para-
19 graph (1), the head of an executive agency shall consider
20 the performance of the offeror with respect to cost, sched-
21 ule, and compliance with technical or functional specifica-
22 tions.”.

1 **TITLE V—PERFORMANCE-BASED**
2 **CONTRACT ADMINISTRATION**

3 **SEC. 501. CONTRACT FINANCING IN ARMED SERVICES AC-**
4 **QUISITIONS.**

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

8 (1) by striking out the section heading and in-
9 serting in lieu thereof the following:

10 **“§ 2307. Contract financing”;**

11 (2) by striking out “(a) The head of an agency”
12 and inserting in lieu thereof “(b) PAYMENT AU-
13 THORITY.—The head of an agency”;

14 (3) by striking out “(b) Payments” and insert-
15 ing in lieu thereof “(d) PAYMENT AMOUNT.—Pay-
16 ments”;

17 (4) by striking out “(c) Advance payments” and
18 inserting in lieu thereof “(e) SECURITY FOR AD-
19 VANCE PAYMENTS.—Advance payments”;

20 (5) by striking out “(d)(1) The Secretary of
21 Defense” and inserting in lieu thereof “(f) CONDI-
22 TIONS FOR PROGRESS PAYMENTS.—(1) The Sec-
23 retary of Defense”; and

1 (6) by striking out “(e)(1) In any case” and in-
2 serting in lieu thereof “(g) ACTION IN CASE OF
3 FRAUD.—(1) In any case”.

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

7 “(a) POLICY.—Payments authorized under this sec-
8 tion and made for financing purposes should be made peri-
9 odically and in a timely manner to facilitate contract per-
10 formance while protecting the security interests of the
11 Government. Government financing shall be provided only
12 to the extent necessary to ensure prompt and efficient per-
13 formance and only after the availability of private financ-
14 ing is considered. A contractor’s use of funds received as
15 contract financing and the contractor’s financial condition
16 shall be monitored. If the contractor is a small business
17 concern, special attention shall be given to meeting the
18 contractor’s financial need.”.

19 (c) PAY FOR PERFORMANCE.—Such section, as
20 amended by subsection (a), is further amended by insert-
21 ing after subsection (b) the following new subsection (c):

22 “(c) Payments under subsection (b) may be made on
23 any of the following bases:

24 “(1) Performance measured by objective, quan-
25 tifiable methods such as receipt of items by the Fed-

1 eral Government, work measurement, or statistical
2 process controls.

3 “(2) Accomplishment of events defined in the
4 program management plan.

5 “(3) Other quantifiable measures of results.”.

6 (d) TERMINOLOGY CORRECTION.—Such section, as
7 amended by subsection (a)(2), is further amended in sub-
8 section (b)(2) by striking out “bid”.

9 (e) EFFECTIVE DATE OF LIEN RELATED TO AD-
10 VANCE PAYMENTS.—Such section, as amended by sub-
11 section (a)(4), is further amended in subsection (e) by in-
12 serting before the period at the end of the third sentence
13 the following: “and is effective immediately upon the first
14 advancement of funds without filing, notice, or any other
15 action by the United States”.

16 (f) CONDITIONS FOR PROGRESS PAYMENTS.—Such
17 section, as amended by subsection (a)(5), is further
18 amended in subsection (f)—

19 (1) in the first sentence of paragraph (1), by
20 striking out “work, which” and all that follows
21 through the period at the end of such sentence and
22 inserting in lieu thereof “work accomplished that
23 meets standards established under the contract. The
24 determination of the extent of the work accom-

1 plished may be measured on a basis set forth in sub-
 2 section (c).”; and

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

5 “(3) This subsection applies to a contract for an
 6 amount equal to or greater than the simplified acquisition
 7 threshold.”.

8 (g) CONFORMING AND CLERICAL AMENDMENTS.—

9 (1) CROSS REFERENCE.—Such section, as
 10 amended by subsection (a), is further amended in
 11 subsections (d) and (e) by striking out “subsection
 12 (a)” and inserting in lieu thereof “subsection (b)”.

13 (2) TABLE OF CONTENTS.—The table of sec-
 14 tions at the beginning of chapter 137 of title 10,
 15 United States Code, is amended by striking out the
 16 item relating to section 2307 and inserting in lieu
 17 thereof the following:

“2307. Contract financing.”.

18 **SEC. 502. CONTRACT FINANCING IN CIVILIAN AGENCY AC-**
 19 **QUISITIONS.**

20 (a) REORGANIZATION OF PRINCIPAL AUTHORITY
 21 PROVISION.—Section 305 of the Federal Property and
 22 Administrative Services Act of 1949 (41 U.S.C. 255) is
 23 amended—

24 (1) by striking out the section heading and in-
 25 serting in lieu thereof the following:

1 “CONTRACT FINANCING”;

2 (2) by striking out “(a) Any executive agency”
3 and inserting in lieu thereof “(b) PAYMENT AU-
4 THORITY.—Any executive agency”;

5 (3) by striking out “(b) Payments” and insert-
6 ing in lieu thereof “(d) PAYMENT AMOUNT.—Pay-
7 ments”; and

8 (4) by striking out “(c) Advance payments” and
9 inserting in lieu thereof “(e) SECURITY FOR AD-
10 VANCE PAYMENTS.—Advance payments”.

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

14 “(a) POLICY.—Payments authorized under this sec-
15 tion and made for financing purposes should be made peri-
16 odically and in a timely manner to facilitate contract per-
17 formance while protecting the security interests of the
18 Government. Government financing shall be provided only
19 to the extent necessary to ensure prompt and efficient per-
20 formance and only after the availability of private financ-
21 ing is considered. A contractor’s use of funds received as
22 contract financing and the contractor’s financial condition
23 shall be monitored. If the contractor is a small business
24 concern, special attention shall be given to meeting the
25 contractor’s financial need.”.

1 (c) PAY FOR PERFORMANCE.—Such section, as
2 amended by subsection (a), is further amended by insert-
3 ing after subsection (b) the following new subsection (c):

4 “(c) Payments under subsection (b) may be made on
5 any of the following bases:

6 “(1) Performance measured by objective, quan-
7 tifiable methods such as receipt of items by the Fed-
8 eral Government, work measurement, or statistical
9 process controls.

10 “(2) Accomplishment of events defined in the
11 program management plan.

12 “(3) Other quantifiable measures of results.”.

13 (d) TERMINOLOGY CORRECTION.—Such section, as
14 amended by subsection (a)(2), is further amended in sub-
15 section (b)(2) by striking out “bid”.

16 (e) EFFECTIVE DATE OF LIEN RELATED TO AD-
17 VANCE PAYMENTS.—Such section, as amended by sub-
18 section (a)(4), is further amended in subsection (e) by in-
19 serting before the period at the end of the third sentence
20 the following: “and is effective immediately upon the first
21 advancement of funds without filing, notice, or any other
22 action by the United States”.

23 (f) REVISION OF CIVILIAN AGENCY PROVISION TO
24 ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-
25 MENTS.—

1 (1) IN GENERAL.—Such section, as amended by
2 subsection (a), is further amended by adding at the
3 end the following:

4 “(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1)
5 The agency head shall ensure that any payment for work
6 in progress (including materials, labor, and other items)
7 under a contract of an executive agency that provides for
8 such payments is commensurate with the work accom-
9 plished that meets standards established under the con-
10 tract. The contractor shall provide such information and
11 evidence as the agency head determines necessary to per-
12 mit the agency head to carry out the preceding sentence.

13 “(2) The agency head shall ensure that progress pay-
14 ments referred to in paragraph (1) are not made for more
15 than 80 percent of the work accomplished under the con-
16 tract so long as the agency head has not made the contrac-
17 tual terms, specifications, and price definite.

18 “(3) This subsection applies to a contract for an
19 amount equal to or greater than the simplified acquisition
20 threshold.

21 “(g) ACTION IN CASE OF FRAUD.—(1) In any case
22 in which the remedy coordination official of an executive
23 agency finds that there is substantial evidence that the
24 request of a contractor for advance, partial, or progress
25 payment under a contract awarded by that executive agen-

1 cy is based on fraud, the remedy coordination official shall
2 recommend that the agency head reduce or suspend fur-
3 ther payments to such contractor.

4 “(2) An agency head receiving a recommendation
5 under paragraph (1) in the case of a contractor’s request
6 for payment under a contract shall determine whether
7 there is substantial evidence that the request is based on
8 fraud. Upon making such a determination, the agency
9 head may reduce or suspend further payments to the con-
10 tractor under such contract.

11 “(3) The extent of any reduction or suspension of
12 payments by an agency head under paragraph (2) on the
13 basis of fraud shall be reasonably commensurate with the
14 anticipated loss to the United States resulting from the
15 fraud.

16 “(4) A written justification for each decision of the
17 agency head whether to reduce or suspend payments
18 under paragraph (2), and for each recommendation re-
19 ceived by the agency head in connection with such deci-
20 sion, shall be prepared and be retained in the files of the
21 executive agency.

22 “(5) Each agency head shall prescribe procedures to
23 ensure that, before the agency head decides to reduce or
24 suspend payments in the case of a contractor under para-
25 graph (2), the contractor is afforded notice of the pro-

1 posed reduction or suspension and an opportunity to sub-
2 mit matters to the head of the agency in response to such
3 proposed reduction or suspension.

4 “(6) Not later than 180 days after the date on which
5 an agency head reduces or suspends payments to a con-
6 tractor under paragraph (2), the remedy coordination offi-
7 cial of the executive agency shall—

8 “(A) review the determination of fraud on
9 which the reduction or suspension is based; and

10 “(B) transmit a recommendation to the agency
11 head whether the suspension or reduction should
12 continue.

13 “(7) Each agency head who receives recommenda-
14 tions made by a remedy coordination official of the execu-
15 tive agency to reduce or suspend payments under para-
16 graph (2) during a fiscal year shall prepare for such year
17 a report that contains the recommendations, the actions
18 taken on the recommendations and the reasons for such
19 actions, and an assessment of the effects of such actions
20 on the Federal Government. Any such report shall be
21 available to any Member of Congress upon request.

22 “(8) An agency head may not delegate responsibilities
23 under this subsection to any person in a position below
24 level IV of the Executive Schedule.

1 “(9) In this subsection, the term ‘remedy coordina-
2 tion official’, with respect to an executive agency, means
3 the person or entity in that executive agency who coordi-
4 nates within that executive agency the administration of
5 criminal, civil, administrative, and contractual remedies
6 resulting from investigations of fraud or corruption related
7 to procurement activities.”.

8 (2) RELATIONSHIP TO PROMPT PAYMENT RE-
9 QUIREMENTS.—The amendments made by para-
10 graph (1) are not intended to impair or modify pro-
11 cedures required by the provisions of chapter 39 of
12 title 31, United States Code, and the regulations is-
13 sued pursuant to such provisions of law, that relate
14 to progress payment requests, as such procedures
15 are in effect on the effective date of this Act.

16 (g) CONFORMING AND CLERICAL AMENDMENTS.—

17 (1) REFERENCE.—Section 305 of the Federal
18 Property and Administrative Services Act of 1949,
19 as amended by subsection (a), is further amended in
20 subsections (c) and (d) by striking out “subsection
21 (a)” and inserting in lieu thereof “subsection (b)”.

22 (2) TABLE OF CONTENTS.—The table of con-
23 tents in the first section of such Act is amended by
24 striking out the item relating to section 305 and in-
25 serting in lieu thereof the following:

“Sec. 305. Contract financing.”.

1 **TITLE VI—DAVIS-BACON ACT**
2 **EXEMPTION**

3 **SEC. 601. CONTRACTS NOT IN EXCESS OF \$500,000.**

4 (a) **IN GENERAL.**—The first section of the Act of
5 March 3, 1931 (40 U.S.C. 276a), commonly referred to
6 as the “Davis-Bacon Act”, is amended in subsection (a)
7 by striking out “\$2,000” and inserting in lieu thereof
8 “\$500,000”.

9 (b) **RELATED REGULATIONS.**—Section 2 of the Act
10 of June 13, 1934 (40 U.S.C. 276c) is amended by insert-
11 ing after “engaged” the following: “under contracts in ex-
12 cess of \$500,000”.

13 **TITLE VII—MISCELLANEOUS**
14 **CONFORMING AMENDMENTS**

15 **SEC. 701. MODIFICATION OF THE RESPONSIBILITY OF THE**
16 **COMPTROLLER OF THE DEPARTMENT OF DE-**
17 **FENSE FOR DEFENSE ACQUISITION BUDG-**
18 **ETS.**

19 Section 137(c) of title 10, United States Code, is
20 amended in each of paragraphs (2), (3), and (4), by insert-
21 ing after the paragraph designation the following: “subject
22 to section 133(b) of this title,”.

1 **SEC. 702. THE DEFENSE ACQUISITION WORK FORCE.**

2 (a) GENERAL AUTHORITIES AND RESPONSIBIL-
3 ITIES.—(1)(A) Sections 1704, 1705, and 1707 of title 10,
4 United States Code, are repealed.

5 (B) The table of sections at the beginning of sub-
6 chapter I of chapter 87 of such title is amended by strik-
7 ing out the items relating to sections 1704 through 1707
8 and inserting in lieu thereof the following:

“1704. Acquisition career program boards.”.

9 (2) Section 1706 of title 10, United States Code, is
10 amended—

11 (A) in the section heading by striking out
12 “**§ 1706**” and inserting in lieu thereof “**§ 1704**”;

13 (B) by striking out subsection (a) and inserting
14 in lieu thereof the following:

15 “(a) ESTABLISHMENT.—The Under Secretary of De-
16 fense for Acquisition shall establish an acquisition career
17 program board to advise the Under Secretary in managing
18 the accession, training, education, and career development
19 of military and civilian personnel in the acquisition
20 workforce and in selecting individuals for the Acquisition
21 Corps under section 1731 of this title.”;

22 (C) in subsection (b)—

23 (i) in the first sentence, by striking out
24 “Each” and inserting in lieu thereof “The”;
25 and

1 (ii) in the second sentence, by striking out
2 “service acquisition executive” and inserting in
3 lieu thereof “Under Secretary”; and

4 (D) in subsection (c)—

5 (i) by striking out “Secretary of a military
6 department” and inserting in lieu thereof
7 “Under Secretary”; and

8 (ii) by striking out “in the department”.

9 (b) DEFENSE ACQUISITION POSITIONS.—(1) Section
10 1722 of title 10, United States Code, is amended—

11 (A) in subsection (g), by striking out “Sec-
12 retary of each military department, acting through
13 the service acquisition executive for that depart-
14 ment,” and inserting in lieu thereof “Secretary of
15 Defense”; and

16 (B) in subsection (h), by striking out “or the
17 Secretary of a military department (as applicable)”.

18 (2) Section 1724(d) of such title is amended in the
19 first sentence—

20 (A) by striking out “a military department”
21 and inserting in lieu thereof “the Department of De-
22 fense”; and

23 (B) by striking out “of that military depart-
24 ment”.

1 (c) ACQUISITION CORPS.—(1) Section 1731 of title
2 10, United States Code, is amended—

3 (A) by striking out subsection (a) and inserting
4 in lieu thereof the following:

5 “(a) ACQUISITION CORPS.—The Secretary of Defense
6 shall establish a Department of Defense Acquisition
7 Corps.”; and

8 (B) in subsection (b), by striking out “an Ac-
9 quisition Corps” and inserting in lieu thereof “the
10 Acquisition Corps”.

11 (2) Section 1732 of such title is amended—

12 (A) in subsection (b)—

13 (i) in paragraph (2)(A)(ii), by striking out
14 “of the employing military department”; and

15 (ii) in paragraph (4), by striking out “or
16 the Secretary of the military department con-
17 cerned”; and

18 (B) in subsection (d)—

19 (i) by striking out “of a military depart-
20 ment” in the first sentence of paragraph (1)
21 and in paragraph (2); and

22 (ii) by striking out “of that military de-
23 partment” in the first sentence of paragraph
24 (1).

1 (3) Section 1733(a) of such title is amended by strik-
2 ing out “an Acquisition Corps” and inserting in lieu there-
3 of “the Acquisition Corps”.

4 (4) Section 1734(a) of such title is amended—

5 (A) in paragraph (1)—

6 (i) in the first sentence, by striking out
7 “Secretary of each military department, acting
8 through the service acquisition executive for
9 that department,” and inserting in lieu thereof
10 “Secretary of Defense, acting through the
11 Under Secretary of Defense for Acquisition,”;
12 and

13 (ii) in the second sentence, by striking out
14 “concerned”; and

15 (B) in paragraph (2), by striking out “con-
16 cerned” in the second sentence.

17 (5) Section 1738 of title 10, United States Code (as
18 redesignated by section 203(b)(1)(A)), is amended—

19 (A) in subsection (a)—

20 (i) in paragraph (1), by striking out “an
21 Acquisition Corps” and inserting in lieu thereof
22 “the Acquisition Corps”; and

23 (ii) in paragraph (5), by striking out “,
24 serving” and all that follows through “Depart-
25 ment of Defense”; and

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

3 “(c) WAIVER.—(1) The Secretary of Defense may
4 waive, on a case-by-case basis, the requirements estab-
5 lished under this subchapter with respect to the assign-
6 ment of an individual to a particular critical acquisition
7 position. Such a waiver may be granted only if unusual
8 circumstances justify the waiver or if the Secretary deter-
9 mines that the individual’s qualifications obviate the need
10 for meeting the education, training, and experience re-
11 quirements established under this subchapter.

12 “(2) The Secretary shall act through the Under Sec-
13 retary of Defense for Acquisition in exercising the author-
14 ity provided in paragraph (1). The authority to grant
15 waivers under this subsection may be delegated by the
16 Under Secretary only to the Director of Acquisition Edu-
17 cation, Training, and Career Development.”.

18 (d) EDUCATION AND TRAINING.—(1) Section
19 1741(c) of title 10, United States Code, is amended to
20 read as follows:

21 “(c) PROGRAMS.—The Under Secretary shall estab-
22 lish and implement the education and training programs
23 authorized by this subchapter.”.

24 (2) Section 1742 of such title is amended by striking
25 out “require that each military department”.

1 (3) Section 1743 of such title is amended in the first
2 sentence by striking out “require that the Secretary of
3 each military department”.

4 (e) GENERAL MANAGEMENT.—(1) Section 1761(a)
5 of title 10, United States Code, is amended by striking
6 out “prescribe regulations to ensure that the military de-
7 partments and Defense Agencies”.

8 (2) Section 1762(c) of such title is amended—

9 (A) by striking out the parenthetical material in
10 the matter above paragraph (1); and

11 (B) in paragraph (4)(A), by striking out “an
12 acquisition corps” and inserting in lieu thereof “the
13 Acquisition Corps”.

14 (3) Section 1763 of such title is amended by striking
15 out the second sentence.

16 **SEC. 703. PROCUREMENT PROCEDURES GENERALLY.**

17 Chapter 137 of title 10, United States Code, is
18 amended as follows:

19 (1) Section 2305(d) is amended—

20 (A) in the first sentence of paragraph
21 (1)(A), by striking out “shall ensure that,” and
22 all that follows through “the head of an agen-
23 cy” and inserting in lieu thereof “, in preparing
24 a solicitation for the award of a development
25 contract for a major system, shall”;

1 (B) in the first sentence of paragraph
2 (2)(A), by striking out “shall ensure that,” and
3 all that follows through “the head of an agen-
4 cy” and inserting in lieu thereof “, in preparing
5 a solicitation for the award of a production con-
6 tract for a major system, shall”;

7 (C) by striking out “the head of the agen-
8 cy” each place it appears and inserting in lieu
9 thereof “the Secretary”; and

10 (D) by striking out “the head of an agen-
11 cy” each place it appears and inserting in lieu
12 thereof “the Secretary of Defense”.

13 (2) Section 2306(h) is amended—

14 (A) in paragraph (1), by striking out “the
15 head of an agency” in the matter above sub-
16 paragraph (A) and inserting in lieu thereof “the
17 Secretary of Defense”;

18 (B) in paragraph (2)(D), by striking out
19 “agencies in” in the matter above clause (i);

20 (C) in paragraph (3), by striking out “the
21 head of the agency concerned” and inserting in
22 lieu thereof “the Secretary of Defense”;

23 (D) by striking out paragraph (7);

1 (E) in paragraph (10), by striking out “in-
2 struct the Secretary of the military department
3 concerned to”; and

4 (F) by redesignating paragraphs (8), (9),
5 (10), and (11) as paragraphs (7), (8), (9), and
6 (10), respectively.

7 (3) Section 2307, as amended by section
8 501(a)(6), is further amended in subsection (g)(7),
9 by striking out the second sentence.

10 (4) Section 2311 is amended—

11 (A) by striking out “Except as provided
12 in” and inserting in lieu thereof “(a) Except as
13 provided in subsection (b) and”; and

14 (B) by adding at the end the following new
15 subsection:

16 “(b) The Secretary of Defense may delegate any au-
17 thority of the Secretary under this chapter only to—

18 “(1) the Deputy Secretary of Defense, who may
19 successively delegate such authority only to the
20 Under Secretary of Defense for Acquisition;

21 “(2) the Under Secretary of Defense for Acqui-
22 sition; or

23 “(3) any acquisition program executive officer
24 or acquisition program manager of the Defense Re-
25 search, Development, and Acquisition Agency.”.

1 (5) Section 2318 is amended—

2 (A) in subsection (a), by striking out “De-
3 fense Logistics Agency” each place it appears
4 and inserting in lieu thereof “Defense Research,
5 Development, and Acquisition Agency”; and

6 (B) in subsection (c), by striking out
7 “Each advocate for competition of an agency”
8 and inserting in lieu thereof “The advocate for
9 competition”.

10 (6) Section 2320(b) is amended—

11 (A) in the matter above paragraph (1), by
12 striking out “an agency named in section 2303
13 of this title” and inserting in lieu thereof “the
14 Department of Defense”; and

15 (B) in paragraph (9), by striking out “the
16 head of the agency to withhold” and inserting
17 in lieu thereof “the withholding of”.

18 (7) Section 2324 is amended—

19 (A) in subsection (e)—

20 (i) in paragraph (2)(C), by striking
21 out “head of the agency awarding the con-
22 tract” and inserting in lieu thereof “Sec-
23 retary”; and

24 (ii) in paragraph (3)—

1 (I) in subparagraph (A), by strik-
2 ing out the matter above clause (i)
3 and inserting in lieu thereof the fol-
4 lowing:

5 “(A) Pursuant to regulations prescribed by the Sec-
6 retary and subject to the availability of appropriations, the
7 Secretary may waive the application of the provisions of
8 subparagraphs (M) and (N) of paragraph (1) to a covered
9 contract (other than a contract to which paragraph (2)
10 applies) if the Secretary determines that—”;

11 (II) by striking out “head of an
12 agency” each place it appears in sub-
13 paragraphs (B) and (C); and

14 (III) in subparagraph (B)(ii), by
15 striking out “head of the agency will
16 consider granting such waiver, and, if
17 the agency head” and inserting in lieu
18 thereof “Secretary will consider grant-
19 ing such waiver, and, if the Sec-
20 retary”;

21 (B) in subsection (h)(2), by striking out
22 “or the Secretary of the military department
23 concerned”; and

24 (C) in subsection (k)(4)—

1 (i) by striking out “the head of the
2 agency that awarded the covered contract”
3 and inserting in lieu thereof “the Secretary
4 of Defense”;

5 (ii) by striking out “the agency head”
6 and inserting in lieu thereof “the Sec-
7 retary”;

8 (iii) by striking out “such agency
9 head” and inserting in lieu thereof “the
10 Secretary”; and

11 (iv) in subparagraph (B), by striking
12 out “agency” and inserting in lieu thereof
13 “Department of Defense”.

14 (8) Section 2326 is amended—

15 (A) by striking out “head of an agency”
16 each place it appears and inserting in lieu
17 thereof “Secretary of Defense”;

18 (B) by striking out “head of the agency”
19 each place it appears and inserting in lieu
20 thereof “Secretary of Defense”; and

21 (C) in subsection (a), by striking out “mili-
22 tary department concerned” and inserting in
23 lieu thereof “Department of Defense”.

24 (9) Section 2327 is amended—

1 (A) in subsection (a), by striking out “The
2 head of an agency” and inserting in lieu thereof
3 “The Secretary of Defense”;

4 (B) in subsection (b), by striking out “the
5 head of an agency” and inserting in lieu thereof
6 “the Secretary of Defense”;

7 (C) in subsection (c)(1)—

8 (i) by striking out “the head of an
9 agency” each place it appears and insert-
10 ing in lieu thereof “the Secretary”; and

11 (ii) by striking out “such head of an
12 agency” each place it appears and insert-
13 ing in lieu thereof “the Secretary”;

14 (D) in subsection (c)(2), by striking out
15 “Upon the request of the head of an agency,
16 the” and inserting in lieu thereof “The”; and

17 (E) in subsection (d)—

18 (i) by striking out “(1)”; and

19 (ii) by striking out paragraph (2).

20 (10) Section 2329 is amended—

21 (A) in subsection (a), by striking out the
22 second sentence;

23 (B) in subsection (b), by striking out “the
24 Secretary of a military department” and insert-

1 ing in lieu thereof “the Secretary of Defense”;
2 and

3 (C) in subsection (c)—

4 (i) by striking out “the Secretary con-
5 cerned” each place it appears and inserting
6 in lieu thereof “the Secretary of Defense”;
7 and

8 (ii) by striking out the second sen-
9 tence of paragraph (3).

10 **SEC. 704. RESEARCH AND DEVELOPMENT.**

11 Chapter 139 of title 10, United States Code, is
12 amended as follows:

13 (1) Section 2352(a) is amended in the matter
14 above paragraph (1)—

15 (A) by striking out “The Secretary of a
16 military department” and inserting in lieu
17 thereof “The Secretary of Defense”; and

18 (B) by striking out “of that military de-
19 partment”.

20 (2) Section 2353 is amended—

21 (A) in the first sentence of subsection
22 (a)—

23 (i) by striking out “contract of a mili-
24 tary department” and inserting in lieu

1 thereof “Department of Defense contract”;
2 and

3 (ii) by striking out “the Secretary of
4 the military department concerned” and
5 inserting in lieu thereof “the Secretary of
6 Defense”; and

7 (B) in subsection (b)(3), by striking out
8 “the Secretary concerned” and inserting in lieu
9 thereof “the Secretary of Defense”.

10 (3) Section 2354 is amended—

11 (A) in subsection (a), by striking out “the
12 Secretary of the military department concerned,
13 any contract of a military department” and in-
14 serting in lieu thereof “the Secretary of De-
15 fense, any contract of the Department of De-
16 fense”;

17 (B) in subsection (c)—

18 (i) by striking out “the Secretary of
19 the department concerned” and inserting
20 in lieu thereof “the Secretary of Defense”;
21 and

22 (ii) by striking out “of his depart-
23 ment”; and

1 (C) in subsection (d), by striking out “the
2 Secretary concerned” and inserting in lieu
3 thereof “the Secretary of Defense”.

4 (4) Section 2355 is amended—

5 (A) by striking out “Secretary of each
6 military department” and all that follows
7 through “Comptroller General,” and inserting
8 in lieu thereof “Secretary of Defense, with the
9 approval of the Comptroller General, may”;

10 (B) by striking out “his department”.

11 (5) Section 2356(a) is amended to read as
12 follows:

13 “(a)(1) Except as provided in paragraph (2), the Sec-
14 retary of Defense may delegate any authority under sec-
15 tion 1584, 2353, 2354, 2355, or 2358 of this title to—

16 “(A) the Deputy Secretary of Defense, who may
17 successively delegate such authority only to the
18 Under Secretary of Defense for Acquisition;

19 “(B) the Under Secretary of Defense for Acqui-
20 sition; or

21 “(C) any employee of the Defense Research,
22 Development, and Acquisition Agency.

23 “(2) The authority of the Secretary under section
24 2353(b)(3) of this title may not be delegated to a person
25 described in paragraph (1)(C).”.

1 (6) Section 2367(c) is amended to read as fol-
2 lows:

3 “(c) Funds appropriated to the Department of De-
4 fense may not be obligated or expended for purposes of
5 operating a federally funded research center that was not
6 in existence before June 2, 1986, until—

7 “(1) the Secretary of Defense submits to Con-
8 gress a report with respect to such center that de-
9 scribes the purpose, mission, and general scope of ef-
10 fort of the center; and

11 “(2) 60 days elapse after the date on which
12 such report is received by Congress.”.

13 (7) Section 2369 is amended—

14 (A) in subsection (a), by striking out “a
15 program for the supervision and coordination
16 of” and inserting in lieu thereof “and conduct
17 appropriate”; and

18 (B) by striking out subsection (b) and in-
19 serting in lieu thereof the following:

20 “(b) PURPOSE OF PRODUCT EVALUATION.—The
21 purpose of each product evaluation activity established
22 under subsection (a) is to evaluate products developed by
23 private industry independent of any contract or other ar-
24 rangement with the United States in order to determine

1 the utility of such products in the Department of De-
2 fense.”.

3 (8) Subsections (a) and (g) of section 2371 are
4 amended by striking out “in carrying out advanced
5 research projects through the Defense Advanced Re-
6 search Projects Agency, and the Secretary of each
7 military department,”.

8 **SEC. 705. MISCELLANEOUS PROCUREMENT PROVISIONS.**

9 Chapter 141 of title 10, United States Code, is
10 amended as follows:

11 (1) Section 2381 is amended—

12 (A) in subsection (a)—

13 (i) by striking out “The Secretary of
14 a military department” and inserting in
15 lieu thereof “The Secretary of Defense”;
16 and

17 (ii) by striking out “that department”
18 in paragraph (1) and inserting in lieu
19 thereof “the Department of Defense”; and

20 (B) in subsection (b)—

21 (i) in the matter above paragraph (1),
22 by striking out “the Secretary concerned”
23 and inserting in lieu thereof “the Secretary
24 of Defense”; and

1 (ii) in paragraph (2), by striking out
2 “military department concerned” and in-
3 serting in lieu thereof “Department of De-
4 fense”.

5 (2) Section 2385 is amended by striking out “a
6 military department” and inserting in lieu thereof
7 “the Department of Defense”.

8 (3) Section 2386 is amended by striking out “a
9 military department” and inserting in lieu thereof
10 “the Department of Defense”.

11 (4) Section 2388(a) is amended by striking out
12 “The Secretary of a military department” and in-
13 serting in lieu thereof “The Secretary of Defense”.

14 (5) Section 2393 is amended—

15 (A) in subsection (a)—

16 (i) by striking out “the Secretary of a
17 military department” in paragraph (1) and
18 inserting in lieu thereof “the Secretary of
19 Defense”; and

20 (ii) by striking out “the Secretary
21 concerned” in paragraph (2) and inserting
22 in lieu thereof “the Secretary of Defense”;
23 and

1 (B) in subsection (b), by striking out “the
2 Secretary concerned” and inserting in lieu
3 thereof “the Secretary of Defense”.

4 (6) Section 2394 is amended—

5 (A) in subsection (a), by striking out “the
6 Secretary of a military department” and insert-
7 ing in lieu thereof “the Secretary of Defense”;

8 (B) by striking out subsection (b); and

9 (C) by redesignating subsection (c) as sub-
10 section (b).

11 (7) Section 2394a is amended—

12 (A) in subsection (a)—

13 (i) by striking out “Secretary of a
14 military department” and inserting in lieu
15 thereof “Secretary of Defense”; and

16 (ii) by striking out “military depart-
17 ment under his jurisdiction” and inserting
18 in lieu thereof “Department of Defense”;
19 and

20 (B) in subsection (b), by striking out the
21 second sentence.

22 (8) Section 2401(a) is amended by striking out
23 “The Secretary of a military department” both
24 places it appears and inserting in lieu thereof “The
25 Secretary of Defense”.

1 (9) Section 2403 is amended—

2 (A) in subsection (a), by striking out para-
3 graph (8);

4 (B) in subsection (b), by striking out “the
5 head of an agency” in the matter above para-
6 graph (1) and inserting in lieu thereof “the
7 Secretary of Defense”;

8 (C) in subsections (c), (f), and (g), by
9 striking out “head of the agency concerned”
10 each place it appears and inserting in lieu
11 thereof “Secretary of Defense”;

12 (D) in subsection (d)—

13 (i) by inserting “(1)” after the sub-
14 section designation;

15 (ii) by redesignating paragraphs (1)
16 and (2) as subparagraphs (A) and (B),
17 respectively;

18 (iii) by striking out the second sen-
19 tence; and

20 (iv) by adding at the end the following
21 new paragraph:

22 “(2) The Secretary may delegate authority under this
23 subsection only to the Under Secretary of Defense for Ac-
24 quisition.”; and

25 (E) in subsection (h)—

1 (i) by striking out “(1)”; and

2 (ii) by striking out paragraph (2).

3 (10) Section 2405(a) is amended by striking
4 out “The Secretary of a military department” and
5 inserting in lieu thereof “The Secretary of Defense”.

6 (11) Section 2406 is amended—

7 (A) in subsection (a)—

8 (i) by striking out “head of an agen-
9 cy” and inserting in lieu thereof “Sec-
10 retary of Defense”;

11 (ii) by striking out “with that agen-
12 cy”; and

13 (iii) by striking out “head of the agen-
14 cy” each place it appears and inserting in
15 lieu thereof “Secretary”; and

16 (B) in subsection (f)—

17 (i) by striking out paragraph (1);

18 (ii) by redesignating paragraphs (2),
19 (3), and (4) as paragraphs (1), (2), and
20 (3), respectively;

21 (iii) by striking out “2432(a)” and in-
22 sserting in lieu thereof “2430” in para-
23 graph (1) (as redesignated by clause (ii));
24 and

1 (iv) by striking out “the head of an
2 agency” and inserting in lieu thereof “the
3 Secretary of Defense” in paragraph (3) (as
4 redesignated by clause (ii)).

5 (12) Section 2411(3) is amended by striking
6 out “Director of the Defense Logistics Agency” and
7 inserting in lieu thereof “Under Secretary of De-
8 fense for Acquisition”.

9 **SEC. 706. MAJOR DEFENSE ACQUISITION PROGRAMS.**

10 Chapter 144 of title 10, United States Code, is
11 amended as follows:

12 (1) Section 2433 is amended—

13 (A) by striking out “service acquisition ex-
14 ecutive designated by the Secretary concerned”
15 each place it appears and inserting in lieu
16 thereof “Under Secretary of Defense for Acqui-
17 sition”;

18 (B) in subsection (c)(2), by striking out
19 “such service acquisition executive” each place
20 it appears and inserting in lieu thereof “the
21 Under Secretary of Defense for Acquisition”;

22 (C) in subsection (d)—

23 (i) by striking out “the service acqui-
24 sition executive” in paragraphs (1) and (2)

1 and inserting in lieu thereof “the Under
2 Secretary”; and

3 (ii) in paragraph (3), by striking out
4 “If, based upon the service acquisition ex-
5 ecutive’s determination, the Secretary con-
6 cerned” and inserting in lieu thereof “If
7 the Under Secretary of Defense for Acqui-
8 sition”; and

9 (D) in subsection (e)—

10 (i) in paragraph (1)(A), by striking
11 out “Secretary concerned” and inserting in
12 lieu thereof “Under Secretary of Defense
13 for Acquisition”;

14 (ii) in paragraph (1)(B), by striking
15 out “Secretary” and inserting in lieu
16 thereof “Under Secretary”;

17 (iii) in paragraph (2), by striking out
18 “(as determined by the Secretary” in the
19 matter above subparagraph (A) and insert-
20 ing in lieu thereof “(as determined by the
21 Under Secretary”; and

22 (iv) in paragraph (3), by striking out
23 “by the Secretary” both places it appears
24 in the first sentence and inserting in lieu
25 thereof “by the Under Secretary”.

1 (2) Section 2434(b)(1) is amended by striking
2 out “the military department,” and all that follows
3 and inserting in lieu thereof “Department of De-
4 fense.”.

5 (3) Section 2435 is amended—

6 (A) in subsection (a)(1), by striking out
7 the matter above subparagraph (A) and insert-
8 ing in lieu thereof the following:

9 “(a) BASELINE DESCRIPTION REQUIREMENT.—(1)
10 The Under Secretary of Defense for Acquisition shall es-
11 tablish a baseline description for each major defense ac-
12 quisition program—”; and

13 (B) in subsection (b)—

14 (i) in paragraph (1), by striking out
15 “Secretary of the military department con-
16 cerned and to the service acquisition execu-
17 tive designated by such Secretary” and in-
18 serting in lieu thereof “Under Secretary of
19 Defense for Acquisition”; and

20 (ii) in paragraph (2), in the matter
21 above subparagraph (A)—

22 (I) by striking out “The Sec-
23 retary of the military department con-
24 cerned” and inserting in lieu thereof

1 “The Under Secretary of Defense for
2 Acquisition”; and

3 (II) by striking out “180
4 days—” and all that follows and in-
5 serting in lieu thereof the following:
6 “180 days, establish a review panel to
7 review such program and to submit to
8 the Under Secretary a report on the
9 results of such review within 45 days
10 after the date on which the program
11 deviation report is submitted under
12 paragraph (1).”.

13 (4) Section 2436 is amended—

14 (A) in subsection (a)—

15 (i) by striking out “, through the Sec-
16 retaries of the military departments,”; and

17 (ii) by striking out “senior procure-
18 ment executive of the military department
19 concerned” and inserting in lieu thereof
20 “Under Secretary of Defense for Acquisi-
21 tion”;

22 (B) in subsection (b)—

23 (i) by striking out “Secretary of a
24 military department” and inserting in lieu
25 thereof “Secretary”; and

1 (ii) by striking out “under the juris-
2 diction of the Secretary”;

3 (C) in subsection (c)—

4 (i) in paragraph (1), by striking out
5 “Secretary concerned” and inserting in
6 lieu thereof “Under Secretary of Defense
7 for Acquisition”; and

8 (ii) in paragraph (3), by striking out
9 “senior procurement executive” and all
10 that follows and inserting in lieu thereof
11 “Under Secretary.”; and

12 (D) in subsection (d), by striking out “the
13 senior procurement executive of the military de-
14 partment concerned, with the approval of”.

15 (5)(A) Section 2437 is repealed.

16 (B) The table of sections at the beginning of
17 chapter 144 is amended by striking out the item re-
18 lating to section 2437.

19 **SEC. 707. SERVICE SPECIFIC ACQUISITION AUTHORITY.**

20 (a) ARMY.—Part IV of subtitle B of title 10, United
21 States Code, is amended by striking out “Secretary of the
22 Army” in sections 4501(c), 4502(a), 4503, 4504, 4505,
23 4506, 4507, 4508(a), 4531, 4532(a), 4533, 4535, 4537,
24 4538, 4540(a), and 4542 (each place it appears) and in-
25 serting in lieu thereof “Secretary of Defense”.

1 (b) NAVY.—Part IV of subtitle C of such title is
2 amended as follows:

3 (1) Strike out “Secretary of the Navy” in sec-
4 tions 7201, 7203(a), 7210(a), 7212(a), 7213, 7229,
5 7299a (each place it appears), 7301(a), 7309(e),
6 7311(a), 7311(b), 7312 (each place it appears),
7 7314, 7341(a), 7342(b), 7345(a), 7361 (each place
8 it appears), 7362, 7364, 7365, and 7521 and insert
9 in lieu thereof “Secretary of Defense”.

10 (2) Section 7203 is amended—

11 (A) in subsection (a), by striking out
12 “(a)”; and

13 (B) by striking out subsection (b).

14 (3) Section 7210 is amended—

15 (A) in subsection (a), by striking out
16 “(a)”; and

17 (B) by striking out subsection (b).

18 (4) Section 7310(a) is amended by striking out
19 “Navy” the first place it appears in the second sen-
20 tence and inserting in lieu thereof “Secretary of De-
21 fense”.

22 (5) Section 7311(a)(1) is amended by striking
23 out “Navy” the first place it appears and inserting
24 in lieu thereof “Secretary of Defense”.

1 (6) Section 7314(2) is amended by striking out
2 “Navy” and inserting in lieu thereof “Department of
3 Defense”.

4 (7) Section 7363 is amended in the first sen-
5 tence—

6 (A) by striking out “Department of the
7 Navy” and inserting in lieu thereof “Secretary
8 of Defense”; and

9 (B) by striking out “Secretary” and insert-
10 ing in lieu thereof “Secretary of Defense”.

11 (8) Section 7521 is amended by striking out
12 “contract made by the Department of the Navy” in
13 the first sentence and inserting in lieu thereof “con-
14 tract entered into for the Department of the Navy”.

15 (9) Section 7522 is amended by striking out
16 “Secretary of the Navy” and all that follows through
17 “chiefs of bureaus” and inserting in lieu thereof
18 “Secretary of Defense”.

19 (c) AIR FORCE.—Part IV of subtitle D of such title
20 is amended in sections 9501(c), 9502(a), 9503, 9504,
21 9505, 9506, 9507, 9511(11), 9531, 9532, 9535, 9537,
22 9538(a), and 9540(a) by striking out “Secretary of the
23 Air Force” and inserting in lieu thereof “Secretary of De-
24 fense”.

1 **SEC. 708. OTHER LAWS.**

2 In any other provision of law providing authority for
 3 the Secretary of a military department or the head of a
 4 Defense Agency of the Department of Defense to perform
 5 a research, development, or acquisition function of the De-
 6 partment of Defense, the reference to that official shall
 7 be deemed to refer to the Secretary of Defense. That func-
 8 tion shall be performed as provided in section 133(b) of
 9 title 10, United States Code (as amended by section
 10 301(a)), and section 232 of such title (as added by section
 11 301(b)).

12 **TITLE VIII—EFFECTIVE DATE**

13 **SEC. 801. EFFECTIVE DATE.**

14 This Act and the amendments made by this Act shall
 15 take effect on the first day of the fiscal year that begins
 16 on or after the date of the enactment of this Act and,
 17 in the case of provisions and amendments that set forth
 18 contracting procedures, shall apply with respect to con-
 19 tract solicitations that are issued on or after such effective
 20 date.

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