

Calendar No. 476103^D CONGRESS
2^D SESSION**S. 2206**

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

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JUNE 7), 1994

Mr. NUNN, from the Committee on Armed Services, reported the following
original bill; which was read twice and placed on the calendar

A BILL

To revise and streamline the acquisition laws of the Federal
Government, 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 Streamlining Act of 1994”.

6 **SEC. 2. TABLE OF CONTENTS.**

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

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- Sec. 1002. Establishment or maintenance of alternative sources of supply.
- Sec. 1003. Clarification of approval authority for use of procedures other than full and open competition.
- Sec. 1004. Task order contracts for advisory and assistance services.
- Sec. 1005. Acquisition of expert services.

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- Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.
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SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

- Sec. 1031. Repeal of requirement for annual report by advocates for competition.

PART II—CIVILIAN AGENCY ACQUISITIONS

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- Sec. 1052. Establishment or maintenance of alternative sources of supply.
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- Sec. 1054. Task order contracts for advisory and assistance services.
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- Sec. 1202. Exceptions to cost or pricing data requirements.
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- Sec. 1208. Exception for transfers between divisions, subsidiaries, and affiliates.
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- Sec. 5051. Performance based management.
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1 ***TITLE I—CONTRACT FORMATION***

2 **Subtitle A—Competition Statutes**

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **Subpart A—Competition Requirements**

5 **SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGU-**
6 **LATION.**

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

9 (1) in subsection (a)(1)(A), by striking out
10 “modifications” and all that follows through “note)”
11 and inserting in lieu thereof “Federal Acquisition
12 Regulation”; and

13 (2) in subsection (g)(1), by striking out “regu-
14 lations modified” and all that follows through
15 “note)” and inserting in lieu thereof “Federal Ac-
16 quisition Regulation”.

17 **SEC. 1002. ESTABLISHMENT OR MAINTENANCE OF ALTER-**
18 **NATIVE SOURCES OF SUPPLY.**

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

21 (1) in paragraph (1)—

22 (A) by striking out “or” at the end of sub-
23 paragraph (B);

1 (B) by striking out the period at the end
2 of subparagraph (C) and inserting in lieu there-
3 of a semicolon; and

4 (C) by adding at the end the following new
5 subparagraphs:

6 “(D) would ensure the continuous availability of
7 a reliable source of supply of such property or serv-
8 ice;

9 “(E) would satisfy projected needs for such
10 property or service determined on the basis of a his-
11 tory of high demand for the property or service; or

12 “(F) in the case of medical supplies, safety sup-
13 plies, or emergency supplies, would satisfy a critical
14 need for such supplies.”;

15 (2) by redesignating paragraphs (2) and (3) as
16 paragraphs (3) and (4), respectively;

17 (3) by inserting after paragraph (1) the follow-
18 ing new paragraph (2):

19 “(2) The determination required of the agency head
20 in paragraph (1) may not be made for a class of purchases
21 or contracts.”; and

22 (4) in paragraph (4), as redesignated by para-
23 graph (2), by striking out “paragraphs (1) and (2)”
24 and inserting in lieu thereof “paragraphs (1) and
25 (3)”.

1 **SEC. 1003. CLARIFICATION OF APPROVAL AUTHORITY FOR**
2 **USE OF PROCEDURES OTHER THAN FULL**
3 **AND OPEN COMPETITION.**

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

8 **SEC. 1004. TASK ORDER CONTRACTS FOR ADVISORY AND**
9 **ASSISTANCE SERVICES.**

10 (a) AUTHORITY.—

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

14 **“§ 2304a. Task order contracts for advisory and as-**
15 **sistance services**

16 “(a) AUTHORITY TO AWARD.—(1) Subject to the re-
17 quirements of this section, the head of an agency may
18 enter into a contract for advisory and assistance services
19 that does not procure or specify a firm quantity of services
20 (other than a minimum or maximum quantity) and that
21 provides for the issuance of task orders during the speci-
22 fied period of the contract.

23 “(2) Except as provided in subsection (h), the head
24 of an agency may enter into a contract described in para-
25 graph (1) only under the authority of this section.

1 “(b) LIMITATION ON CONTRACT PERIOD.—The pe-
2 riod of a contract referred to in subsection (a), including
3 all periods of extensions of the contract under options,
4 modifications, or otherwise, may not exceed 5 years unless
5 a longer period is specifically authorized in a law that is
6 applicable to such contract.

7 “(c) CONTRACT PROCEDURES.—(1) The head of an
8 agency may use procedures other than competitive proce-
9 dures to enter into a contract referred to in subsection
10 (a) only if an exception in subsection (c) of section 2304
11 of this title applies to the contract and the use of such
12 procedures is approved in accordance with subsection (f)
13 of such section.

14 “(2) The notice required by section 18 of the Office
15 of Federal Procurement Policy Act (41 U.S.C. 416) and
16 section 8(e) of the Small Business Act (15 U.S.C. 637(e))
17 shall reasonably and fairly describe the general scope,
18 magnitude, and duration of the proposed contract in a
19 manner that would reasonably enable a potential offeror
20 to decide whether to request the solicitation and consider
21 submitting an offer.

22 “(3) The solicitation shall include the following:

23 “(A) The period of the contract, including the
24 number of options to extend the contract and the pe-

1 riod for which the contract may be extended under
2 each option, if any.

3 “(B) The maximum quantity or dollar value of
4 services to be procured under the contract.

5 “(C) A statement of work, specifications, or
6 other description that reasonably describes the gen-
7 eral scope, nature, complexity, and purposes of the
8 services to be procured under the contract.

9 “(4)(A) The head of an agency may, on the basis of
10 one solicitation, award separate contracts under this sec-
11 tion for the same or similar services to two or more
12 sources if the solicitation states that the head of the agen-
13 cy has the option to do so.

14 “(B) If, in the case of a contract for advisory and
15 assistance services to be entered into under the authority
16 of this section, the contract period is to exceed 3 years
17 and the contract amount is estimated to exceed
18 \$10,000,000 (including all options), the solicitation
19 shall—

20 “(i) provide for a multiple award authorized
21 under subparagraph (A); and

22 “(ii) include a statement that the head of the
23 agency may also elect to award only one contract if
24 the head of the agency determines in writing that

1 only one of the offerers is capable of providing the
2 services required at the level of quality required.

3 “(C) Subparagraph (B) does not apply in the case
4 of a solicitation for which the head of an agency deter-
5 mines in writing that, because the services required under
6 the contract are unique or highly specialized, it is not
7 practicable to award more than one contract.

8 “(5) A contract referred to in subsection (a) shall
9 contain the same information that is required by para-
10 graph (3) to be included in the solicitation of offers for
11 that contract.

12 “(d) ORDER PROCEDURES.—(1) The following ac-
13 tions are not required for a task order issued under a con-
14 tract entered into in accordance with this section:

15 “(A) A separate notice for such order under
16 section 18 of the Office of Federal Procurement Pol-
17 icy Act (41 U.S.C. 416) or section 8(e) of the Small
18 Business Act (15 U.S.C. 637(e)).

19 “(B) Except as provided in paragraph (2), a
20 competition (or a waiver of competition approved in
21 accordance with section 2304(f) of this title) that is
22 separate from that used for entering into the con-
23 tract.

24 “(2)(A) When multiple contracts are awarded pursu-
25 ant to subsection (c)(4), all contractors awarded such con-

1 tracts shall be provided a fair opportunity to be consid-
2 ered, pursuant to procedures set forth in the contracts,
3 for each task order in excess of \$2,500 that is to be issued
4 under any of the contracts unless—

5 “(i) the agency’s need for the services ordered
6 is of such unusual urgency that competition would
7 result in unacceptable delays in fulfilling the agen-
8 cy’s needs;

9 “(ii) only one such contractor is capable of pro-
10 viding the services required at the level of quality re-
11 quired because the services ordered are unique or so
12 highly specialized;

13 “(iii) the task order should be issued on a sole-
14 source basis in the interest of economy and effi-
15 ciency because it is a logical follow-on to a task
16 order already issued on a competitive basis; or

17 “(iv) the order must be placed with a particular
18 contractor in order to satisfy a minimum guarantee.

19 “(B) When a task order is issued in accordance with
20 subparagraph (A), the order shall include a statement of
21 work that clearly specifies all tasks to be performed under
22 the order.

23 “(3) A protest is not authorized in connection with
24 the issuance or proposed issuance of a task order except
25 for a protest on the ground that the order increases the

1 scope, period, or maximum value of the contract under
2 which the order is issued.

3 “(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM
4 VALUE OF CONTRACT.—(1) A task order may not increase
5 the scope, period, or maximum value of the contract under
6 which the order is issued. The scope, period, or maximum
7 value of the contract may be increased only by modifica-
8 tion of the contract.

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

14 “(3) Notice regarding the modification shall be pro-
15 vided in accordance with section 18 of the Office of Fed-
16 eral Procurement Policy Act (41 U.S.C. 416) and section
17 8(e) of the Small Business Act (15 U.S.C. 637(e)).

18 “(4)(A) Notwithstanding the limitation on the con-
19 tract period set forth in subsection (b) or in a solicitation
20 or contract pursuant to subsection (c), a contract entered
21 into by the head of an agency under this section may be
22 extended on a sole-source basis for a period not exceeding
23 6 months if the agency head determines that—

24 “(i) the award of a follow-on contract has been
25 delayed by circumstances that were not reasonably

1 foreseeable at the time the initial contract was en-
2 tered into; and

3 “(ii) the extension is necessary in order to en-
4 sure continuity of the receipt of services pending the
5 award of, and commencement of performance under,
6 the follow-on contract.

7 “(B) A contract may be extended under the authority
8 of subparagraph (A) only once and only in accordance
9 with the limitations and requirements of this subsection.

10 “(f) TASK ORDER OMBUDSMAN.—Each head of an
11 agency who awards multiple contracts pursuant to sub-
12 section (c)(4) shall appoint or designate a task order om-
13 budsman who shall be responsible for reviewing complaints
14 from the contractors on such contracts and ensuring that
15 all of the contractors are afforded a fair opportunity to
16 be considered for task orders when required under sub-
17 section (d)(2). The task order ombudsman shall be a sen-
18 ior agency official who is independent of the contracting
19 officer for the contracts and may be the agency’s competi-
20 tion advocate.

21 “(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—
22 This section does not apply to a contract for the acquisi-
23 tion of property or services that includes acquisition of ad-
24 visory and assistance services if the head of an agency en-
25 tering into such contract determines that, under the con-

1 tract, advisory and assistance services are necessarily inci-
2 dent to, and not a significant component of, the contract.

3 “(h) RELATIONSHIP TO OTHER CONTRACTING AU-
4 THORITY.—Nothing in this section may be construed to
5 limit the authority of the head of an agency to enter into
6 single or multiple task order contracts, or single or mul-
7 tiple delivery order contracts, for property or services
8 (other than advisory and assistance services) under other
9 provisions of this chapter or under any other provision of
10 law.

11 “(i) ADVISORY AND ASSISTANCE SERVICES DE-
12 FINED.—In this section, the term ‘advisory and assistance
13 services’ has the meaning given such term in section
14 1105(g) of title 31.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions at the beginning of such chapter is amended
17 by inserting after the item relating to section 2304
18 the following new item:

“2304a. Task order contracts for advisory and assistance services.”.

19 (b) REPEAL OF SUPERSEDED PROVISION.—Section
20 2304 of title 10, United States Code, is amended by strik-
21 ing out subsection (j).

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

1 **SEC. 1005. ACQUISITION OF EXPERT SERVICES.**

2 Section 2304(c)(3) of title 10, United States Code,
3 is amended—

4 (1) by striking out “or (B)” and inserting in
5 lieu thereof “(B)”; and

6 (2) by inserting before the semicolon at the end
7 the following: “, or (C) to procure the services of an
8 expert for use, in any litigation or dispute (including
9 any reasonably foreseeable litigation or dispute) in-
10 volving the Federal Government, in any trial, hear-
11 ing, or proceeding before any court, administrative
12 tribunal, or agency, or in any part of an alternative
13 dispute resolution process, whether or not the expert
14 is expected to testify”.

15 **Subpart B—Planning, Solicitation, Evaluation, and**
16 **Award**

17 **SEC. 1011. SOURCE SELECTION FACTORS.**

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

20 (1) in paragraph (2)—

21 (A) in subparagraph (A)(i), by striking out
22 “nonprice-related factors)” and inserting in lieu
23 thereof “nonprice-related factors and
24 subfactors)”; and

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

4 “(I) either a statement that the pro-
5 posals are intended to be evaluated with,
6 and award made after, discussions with the
7 offerors, or a statement that the proposals
8 are intended to be evaluated, and award
9 made, without discussions with the offerors
10 (other than discussions conducted for the
11 purpose of minor clarification) unless dis-
12 cussions are determined to be necessary;
13 and”;

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

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

19 “(i) shall clearly establish the relative impor-
20 tance assigned to the evaluation factors and
21 subfactors, including the quality of the product or
22 services to be provided (including technical capabil-
23 ity, management capability, prior experience, and
24 past performance of the offeror);

1 “(ii) shall include cost or price to the Govern-
2 ment as an evaluation factor that must be consid-
3 ered in the evaluation of proposals; and

4 “(iii) shall disclose to offerors whether all eval-
5 uation factors other than cost or price, when com-
6 bined, are—

7 “(I) significantly more important than cost
8 or price;

9 “(II) approximately equal in importance to
10 cost or price; or

11 “(III) significantly less important than
12 cost or price.

13 “(B) Nothing in this paragraph prohibits an agency
14 from—

15 “(i) providing additional information in a solici-
16 tation, including numeric weights for all evaluation
17 factors; or

18 “(ii) stating in a solicitation that award will be
19 made to the offeror that meets the solicitation’s
20 mandatory requirements at the lowest cost or
21 price.”.

22 **SEC. 1012. SOLICITATION PROVISION REGARDING EVALUA-**
23 **TION OF PURCHASE OPTIONS.**

24 (a) **OPTIONS FOR ADDITIONAL PURCHASES.**—Sub-
25 section (a) of section 2305 of title 10, United States Code,

1 as amended by section 1011, is further amended by adding
2 at the end the following new paragraph:

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

10 (b) REPEAL OF SUPERSEDED PROVISION.—Section
11 2301(a) of such title is amended—

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

13 (2) by inserting “and” at the end of paragraph
14 (5); and

15 (3) by striking out “; and” at the end of para-
16 graph (6) and inserting in lieu thereof a period.

17 **SEC. 1013. PROMPT NOTICE OF AWARD.**

18 (a) SEALED BID PROCEDURES.—Section 2305(b)(3)
19 of title 10, United States Code, is amended by adding at
20 the end the following: “As soon as practicable after the
21 date of contract award, the head of the agency shall, in
22 accordance with procedures prescribed in the Federal Ac-
23 quisition Regulation, notify all offerors not awarded the
24 contract that the contract has been awarded.”.

1 (b) COMPETITIVE PROPOSALS PROCEDURES.—Sec-
2 tion 2305(b)(4)(B) of title 10, United States Code, is
3 amended in the second sentence by striking out “source
4 and shall promptly notify” and inserting in lieu thereof
5 “source. As soon as practicable after the date of contract
6 award, the head of the agency shall, in accordance with
7 procedures prescribed in the Federal Acquisition Regula-
8 tion, notify”.

9 **SEC. 1014. POST-AWARD DEBRIEFINGS.**

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

12 (1) by redesignating paragraph (5) as para-
13 graph (6); and

14 (2) by inserting after paragraph (4) the follow-
15 ing new paragraph (5):

16 “(5)(A) When a contract is awarded by the head of
17 an agency on the basis of competitive proposals, an unsuc-
18 cessful offeror, upon written request received by the agen-
19 cy within 3 days after the date on which the unsuccessful
20 offeror receives the notification of the contract award,
21 shall be debriefed and furnished the basis for the selection
22 decision and contract award. An employee of the agency
23 shall debrief the offeror promptly after receipt of the re-
24 quest by the agency.

25 “(B) The debriefing shall include, at a minimum—

1 “(i) the agency’s evaluation of the significant
2 weak or deficient factors in the offeror’s offer;

3 “(ii) the overall evaluated cost and technical
4 rating of the offer of the contractor awarded the
5 contract and the overall evaluated cost and technical
6 rating of the offer of the debriefed offeror;

7 “(iii) the overall ranking of all offers;

8 “(iv) a summary of the rationale for the award;

9 “(v) in the case of a proposal that incorporates
10 equipment that is a commercial item, the make and
11 model of the item incorporated in the offer of the
12 contractor awarded the contract; and

13 “(vi) reasonable responses to questions posed by
14 the debriefed offeror as to whether source selection
15 procedures set forth in the solicitation, applicable
16 regulations, and other applicable authorities were
17 followed by the agency.

18 “(C) The debriefing may not include point-by-point
19 comparisons of the debriefed offeror’s offer with other of-
20 fers and may not disclose any information that is exempt
21 from disclosure under section 552 of title 5, including in-
22 formation relating to—

23 “(i) trade secrets;

24 “(ii) privileged or confidential manufacturing
25 processes and techniques; and

1 “(iii) commercial and financial information that
2 is privileged or confidential, including cost break-
3 downs, profit, indirect cost rates, and similar infor-
4 mation.

5 “(D) Each solicitation for competitive proposals shall
6 include a statement that information described in subpara-
7 graph (B) may be disclosed in post-award debriefings.

8 “(E) If, within one year after the date of the contract
9 award and as a result of a successful procurement protest
10 or otherwise, the agency seeks to fulfill the requirement
11 under the contract either on the basis of a new solicitation
12 of offers or on the basis of new best and final offers re-
13 quested for that contract, the agency shall make available
14 to all offerors—

15 “(i) the information provided in debriefings
16 under this paragraph regarding the offer of the con-
17 tractor awarded the contract; and

18 “(ii) the comparable debriefing information that
19 was prepared with respect to the original offerors.

20 “(F) The contracting officer shall include a summary
21 of the debriefing in the contract file.”.

22 **SEC. 1015. PROTEST FILE.**

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

1 “(f) If, in connection with a protest, the head of an
2 agency determines that a solicitation, proposed award, or
3 award does not comply with the requirements of law or
4 regulation, the head of the agency may take—

5 “(1) any action set out in subparagraphs (A)
6 through (F) of subsection (b)(1) of section 3554 of
7 title 31; and

8 “(2) may pay costs described in paragraph (1)
9 of section 3554(c) of title 31 within the limits re-
10 ferred to in paragraph (2) of such section.”.

11 **SEC. 1017. TWO-PHASE SELECTION PROCEDURES.**

12 (a) PROCEDURES AUTHORIZED.—Chapter 137 of
13 title 10, United States Code, is amended by inserting after
14 section 2305 the following new section:

15 **“§ 2305a. Two-phase selection procedures**

16 “(a) PROCEDURES AUTHORIZED.—The head of an
17 agency may use two-phase selection procedures for enter-
18 ing into a contract for the acquisition of property or serv-
19 ices when the head of the agency determines that three
20 or more offers will be received for such contract, substan-
21 tial design work must be performed before an offeror can
22 develop a price or cost proposal for such contract, and the
23 offerors will incur a substantial amount of expenses in pre-
24 paring the offers.

1 “(b) PROCEDURES DESCRIBED.—Two-phase selec-
2 tion procedures consist of the following:

3 “(1) The head of the agency solicits proposals
4 that—

5 “(A) include information on the offerors’—

6 “(i) technical approach; and

7 “(ii) technical qualifications; and

8 “(B) do not include—

9 “(i) detailed design information; or

10 “(ii) cost or price information.

11 “(2) The head of the agency evaluates the pro-
12 posals on the basis of evaluation criteria set forth in
13 the solicitation, except that the head of the agency
14 does not consider cost-related or price-related eval-
15 uation factors.

16 “(3) The head of the agency selects at least
17 three offerors as the most highly qualified to provide
18 the property or services under the contract and re-
19 quests the selected offerors to submit competitive
20 proposals that include cost or price information.

21 “(4) The head of the agency awards the con-
22 tract in accordance with section 2305(b)(4) of this
23 title.

24 “(c) RESOURCE COMPARISON CRITERION RE-
25 QUIRED.—In using two-phase selection procedures for en-

1 tering into a contract, the head of the agency shall estab-
 2 lish a resource criterion or a financial criterion applicable
 3 to the contract in order to provide a consistent basis for
 4 comparing the offerors and their proposals.

5 “(d) TWO-PHASE SELECTION PROCEDURES DE-
 6 FINED.—In this section, the term ‘two-phase selection pro-
 7 cedures’ means procedures described in subsection (b) that
 8 are used for the selection of a contractor on the basis of
 9 cost or price and other evaluation criteria to provide prop-
 10 erty or services in accordance with the provisions of a con-
 11 tract which requires the contractor to design the property
 12 to be acquired under the contract and produce or con-
 13 struct such property.

14 “(e) APPLICABILITY ONLY TO DEPARTMENT OF DE-
 15 FENSE.—This section does not apply to the Coast Guard
 16 or the National Aeronautics and Space Administration.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
 18 at the beginning of such chapter is amended by inserting
 19 after the item relating to section 2305 the following:

“2305a. Two-phase selection procedures.”.

20 **Subpart C—Kinds of Contracts**

21 **SEC. 1021. SECRETARIAL DETERMINATION REGARDING**
 22 **USE OF COST TYPE OR INCENTIVE CON-**
 23 **TRACT.**

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

1 **SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) REPEAL OF UNNECESSARY CROSS REF-
3 ERENCE.—Subsection (f) of section 2306 of title 10, Unit-
4 ed States Code, is repealed.

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

8 (c) NEUTERIZATION OF REFERENCE.—Subsection
9 (e)(1) of such section, as redesignated by subsection (b),
10 is amended in the matter above clause (i) by striking out
11 “whenever he finds” and inserting in lieu thereof “when-
12 ever the head of the agency finds”.

13 **Subpart D—Miscellaneous Provisions for the**
14 **Encouragement of Competition**

15 **SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
16 **PORT BY ADVOCATES FOR COMPETITION.**

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

19 **PART II—CIVILIAN AGENCY ACQUISITIONS**

20 **Subpart A—Competition Requirements**

21 **SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGU-**
22 **LATION.**

23 Section 303 of the Federal Property and Administra-
24 tive Services Act of 1949 (41 U.S.C. 253) is amended—

25 (1) in subsection (a)(1)(A), by striking out
26 “modifications” and all that follows through “of

1 1984” and inserting in lieu thereof “Federal Acqui-
2 sition Regulation”; and

3 (2) in subsection (g)(1), by striking out “regu-
4 lations modified” and all that follows through “of
5 1984,” and inserting in lieu thereof “Federal Acqui-
6 sition Regulation”.

7 **SEC. 1052. ESTABLISHMENT OR MAINTENANCE OF ALTER-**
8 **NATIVE SOURCES OF SUPPLY.**

9 Section 303(b) of the Federal Property and Adminis-
10 trative Services Act of 1949 (41 U.S.C. 253(b)) is amend-
11 ed—

12 (1) in paragraph (1)—

13 (A) by striking out “or” at the end of sub-
14 paragraph (B);

15 (B) by striking out the period at the end
16 of subparagraph (C) and inserting in lieu there-
17 of a semicolon; and

18 (C) by adding at the end the following new
19 subparagraphs:

20 “(D) would ensure the continuous availability of
21 a reliable source of supply of such property or serv-
22 ice;

23 “(E) would satisfy projected needs for such
24 property or service determined on the basis of a his-
25 tory of high demand for the property or service; or

1 “(F) in the case of medical supplies, safety sup-
2 plies, or emergency supplies, would satisfy a critical
3 need for such supplies.”;

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

6 (3) by inserting after paragraph (1) the follow-
7 ing new paragraph (2):

8 “(2) The determination required of the agency head
9 in paragraph (1) may not be made for a class of purchases
10 or contracts.”; and

11 (4) in paragraph (4), as redesignated by para-
12 graph (2), by striking out “paragraphs (1) and (2)”
13 and inserting in lieu thereof “paragraphs (1) and
14 (3)”.

15 **SEC. 1053. CLARIFICATION OF APPROVAL AUTHORITY FOR**
16 **USE OF PROCEDURES OTHER THAN FULL**
17 **AND OPEN COMPETITION.**

18 Section 303(f)(1)(B)(i) of the Federal Property and
19 Administrative Services Act of 1949 (41 U.S.C.
20 253(f)(1)(B)(i)) is amended by inserting before the semi-
21 colon at the end the following: “or by an official referred
22 to in clause (ii), (iii), or (iv)”.

1 **SEC. 1054. TASK ORDER CONTRACTS FOR ADVISORY AND**
2 **ASSISTANCE SERVICES.**

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

7 “TASK ORDER CONTRACTS FOR ADVISORY AND
8 ASSISTANCE SERVICES

9 “SEC. 303H. (a) **AUTHORITY TO AWARD.**—(1) Sub-
10 ject to the requirements of this section, the head of an
11 executive agency may enter into a contract for advisory
12 and assistance services that does not procure or specify
13 a firm quantity of services (other than a minimum or max-
14 imum quantity) and that provides for the issuance of task
15 orders during the specified period of the contract.

16 “(2) Except as provided in subsection (h), the agency
17 head may enter into a contract described in paragraph (1)
18 only under the authority of this section.

19 “(b) **LIMITATION ON CONTRACT PERIOD.**—The pe-
20 riod of a contract referred to in subsection (a), including
21 all periods of extensions of the contract under options,
22 modifications, or otherwise, may not exceed 5 years unless
23 a longer period is specifically authorized in a law that is
24 applicable to such contract.

25 “(c) **CONTRACT PROCEDURES.**—(1) An agency head
26 may use procedures other than competitive procedures to

1 enter into a contract referred to in subsection (a) only if
2 an exception in subsection (c) of section 303 applies to
3 the contract and the use of such procedures is approved
4 in accordance with subsection (f) of such section.

5 “(2) The notice required by section 18 of the Office
6 of Federal Procurement Policy Act (41 U.S.C. 416) and
7 section 8(e) of the Small Business Act (15 U.S.C. 637(e))
8 shall reasonably and fairly describe the general scope,
9 magnitude, and duration of the proposed contract in a
10 manner that would reasonably enable a potential offeror
11 to decide whether to request the solicitation and consider
12 submitting an offer.

13 “(3) The solicitation shall include the following:

14 “(A) The period of the contract, including the
15 number of options to extend the contract and the pe-
16 riod for which the contract may be extended under
17 each option, if any.

18 “(B) The maximum quantity or dollar value of
19 the services to be procured under the contract.

20 “(C) A statement of work, specifications, or
21 other description that reasonably describes the gen-
22 eral scope, nature, complexity, and purposes of the
23 services to be procured under the contract.

24 “(4)(A) An agency head may, on the basis of one so-
25 licitation, award separate contracts under this section for

1 the same or similar services to two or more sources if the
2 solicitation states that the agency head has the option to
3 do so.

4 “(B) If, in the case of a contract for advisory and
5 assistance services to be entered into under the authority
6 of this section, the contract period is to exceed 3 years
7 and the contract amount is estimated to exceed
8 \$10,000,000 (including all options), the solicitation
9 shall—

10 “(i) provide for a multiple award authorized
11 under subparagraph (A); and

12 “(ii) include a statement that the agency head
13 may also elect to award only one contract if the
14 agency head determines in writing that only one of
15 the offerers is capable of providing the services re-
16 quired at the level of quality required.

17 “(C) Subparagraph (B) does not apply in the case
18 of a solicitation for which the agency head determines in
19 writing that, because the services required under the con-
20 tract are unique or highly specialized, it is not practicable
21 to award more than one contract.

22 “(5) A contract referred to in subsection (a) shall
23 contain the same information that is required by para-
24 graph (3) to be included in the solicitation of offers for
25 that contract.

1 “(d) ORDER PROCEDURES.—(1) The following ac-
2 tions are not required for a task order issued under a con-
3 tract entered into in accordance with this section:

4 “(A) A separate notice for such order under
5 section 18 of the Office of Federal Procurement Pol-
6 icy Act (41 U.S.C. 416) or section 8(e) of the Small
7 Business Act (15 U.S.C. 637(e)).

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

12 “(2)(A) When multiple contracts are awarded pursu-
13 ant to subsection (c)(4), all contractors awarded such con-
14 tracts shall be provided a fair opportunity to be consid-
15 ered, pursuant to procedures set forth in the contracts,
16 for each task order in excess of \$2,500 that is to be issued
17 under any of the contracts unless—

18 “(i) the agency’s need for the services ordered
19 is of such unusual urgency that competition would
20 result in unacceptable delays in fulfilling the agen-
21 cy’s needs;

22 “(ii) only one such contractor is capable of pro-
23 viding the services required at the level of quality re-
24 quired because the services ordered are unique or
25 highly specialized;

1 “(iii) the task order should be issued on a sole-
2 source basis in the interest of economy and effi-
3 ciency because it is a logical follow-on to a task
4 order already issued on a competitive basis; or

5 “(iv) the order must be placed with a particular
6 contractor in order to satisfy a minimum guarantee.

7 “(B) When a task order is issued in accordance with
8 subparagraph (A), the order shall include a statement of
9 work that clearly specifies all tasks to be performed under
10 the order.

11 “(3) A protest is not authorized in connection with
12 the issuance or proposed issuance of a task order except
13 for a protest on the ground that the order increases the
14 scope, period, or maximum value of the contract under
15 which the order is issued.

16 “(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM
17 VALUE OF CONTRACT.—(1) A task order may not increase
18 the scope, period, or maximum value of the contract under
19 which the order is issued. The scope, period, or maximum
20 value of the contract may be increased only by modifica-
21 tion of the contract.

22 “(2) Unless use of procedures other than competitive
23 procedures is authorized by an exception in subsection (c)
24 of section 303 and approved in accordance with subsection

1 (f) of such section, competitive procedures shall be used
2 for making such a modification.

3 “(3) Notice regarding the modification shall be pro-
4 vided in accordance with section 18 of the Office of Fed-
5 eral Procurement Policy Act (41 U.S.C. 416) and section
6 8(e) of the Small Business Act (15 U.S.C. 637(e)).

7 “(4)(A) Notwithstanding the limitation on the con-
8 tract period set forth in subsection (b) or in a solicitation
9 or contract pursuant to subsection (c), a contract entered
10 into by the head of an agency under this section may be
11 extended on a sole-source basis for a period not exceeding
12 6 months if the agency head determines that—

13 “(i) the award of a follow-on contract has been
14 delayed by circumstances that were not reasonably
15 foreseeable at the time the initial contract was en-
16 tered into; and

17 “(ii) the extension is necessary in order to en-
18 sure continuity of the receipt of services pending the
19 award of, and commencement of performance under,
20 the follow-on contract.

21 “(B) A contract may be extended under the authority
22 of subparagraph (A) only once and only in accordance
23 with the limitations and requirements of this subsection.

24 “(f) TASK ORDER OMBUDSMAN.—Each agency head
25 who awards multiple contracts pursuant to subsection

1 (c)(4) shall appoint or designate a task order ombudsman
2 who shall be responsible for reviewing complaints from the
3 contractors on such contracts and ensuring that all of the
4 contractors are afforded a fair opportunity to be consid-
5 ered for task orders when required under subsection
6 (d)(2). The task order ombudsman shall be a senior agen-
7 cy official who is independent of the contracting officer
8 for the contracts and may be the agency's competition ad-
9 vocate.

10 “(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—
11 This section does not apply to a contract for the acquisi-
12 tion of property or services that includes acquisition of ad-
13 visory and assistance services if the agency head entering
14 into such contract determines that, under the contract, ad-
15 visory and assistance services are necessarily incident to,
16 and not a significant component of, the contract.

17 “(h) RELATIONSHIP TO OTHER CONTRACTING AU-
18 THORITY.—Nothing in this section may be construed to
19 limit the authority of the head of an agency to enter into
20 single or multiple task order contracts, or single or mul-
21 tiple delivery order contracts, for goods or services (other
22 than advisory and assistance services) under other provi-
23 sions of this title or under any other provision of law.

24 “(i) ADVISORY AND ASSISTANCE SERVICES DE-
25 FINED.—In this section, the term ‘advisory and assistance

1 services' has the meaning given such term in section
2 1105(g) of title 31, United States Code.”.

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

“Sec. 303H. Task order contracts for advisory and assistance services.”.

6 **SEC. 1055. ACQUISITION OF EXPERT SERVICES.**

7 (a) EXCEPTION TO REQUIREMENT FOR USE OF COM-
8 PETITIVE PROCEDURES.—Section 303(c)(3) of the Fed-
9 eral Property and Administrative Services Act of 1949 (41
10 U.S.C. 253(c)) is amended—

11 (1) by striking out “or (B)” and inserting in
12 lieu thereof “(B)”; and

13 (2) by inserting before the semicolon at the end
14 the following: “, or (C) to procure the services of an
15 expert for use, in any litigation or dispute (including
16 any reasonably foreseeable litigation or dispute) in-
17 volving the Federal Government, in any trial, hear-
18 ing, or proceeding before any court, administrative
19 tribunal, or agency, or in any part of an alternative
20 dispute resolution process, whether or not the expert
21 is expected to testify”.

22 (b) PROCUREMENT NOTICE.—

23 (1) AMENDMENT OF OFFICE OF FEDERAL PRO-
24 CUREMENT POLICY ACT.—Section 18(c) of the Office

1 of Federal Procurement Policy Act (41 U.S.C.
2 416(c)) is amended—

3 (A) by striking out “or” at the end of sub-
4 paragraph (D);

5 (B) by striking out the period at the end
6 of subparagraph (E) and inserting in lieu there-
7 of “; or”; and

8 (C) by adding at the end the following:

9 “(F) the procurement is for the services of an
10 expert for use in any litigation or dispute (including
11 any reasonably foreseeable litigation or dispute) in-
12 volving the Federal Government in any trial, hear-
13 ing, or proceeding before any court, administrative
14 tribunal, or agency, or in any part of an alternative
15 dispute resolution process, whether or not the expert
16 is expected to testify.”.

17 (2) AMENDMENT OF SMALL BUSINESS ACT.—
18 Section 8(g) of the Small Business Act (15 U.S.C.
19 637(c)) is amended—

20 (A) by striking out “or” at the end of sub-
21 paragraph (D);

22 (B) by striking out the period at the end
23 of subparagraph (E) and inserting in lieu there-
24 of “; or”; and

25 (C) by adding at the end the following:

1 “(F) the procurement is for the services of an
2 expert for use in any litigation or dispute (including
3 preparation for any foreseeable litigation or dispute)
4 that involves or could involve the Federal Govern-
5 ment in any trial, hearing, or proceeding before any
6 court, administrative tribunal, or agency, or in any
7 part of an alternative dispute resolution process,
8 whether or not the expert is expected to testify.”.

9 (c) REPEAL OF AMENDMENTS TO UNCODIFIED
10 TITLE.—The following provisions of law are repealed:

11 (1) Section 532 of Public Law 101–509 (104
12 Stat. 1470) and the provision of law set out in
13 quotes in that section.

14 (2) Section 529 of Public Law 102–393 (106
15 Stat. 1761) and the matters inserted and added by
16 that section.

17 **SEC. 1056. CONTINUED OCCUPANCY OF LEASED SPACE.**

18 Section 303(d) of the Federal Property and Adminis-
19 trative Services Act of 1949 (41 U.S.C. 253(d)) is amend-
20 ed—

21 (1) by redesignating paragraph (2) as para-
22 graph (3); and

23 (2) by inserting after paragraph (1) the follow-
24 ing new paragraph (2):

1 “(2)(A) For the purposes of applying subsection
2 (c)(1) in the case of a follow-on lease to be entered into
3 for the purpose of providing for continued occupancy of
4 particular space in leased real property by a Federal agen-
5 cy, space may be treated as being available only from the
6 lessor of such space and may be acquired through the use
7 of procedures other than competitive procedures (without
8 the justification otherwise required by subsection (f)) if
9 a written determination is made by the contracting officer
10 that—

11 “(i) the occupying agency has a continuing need
12 for the space;

13 “(ii) the space meets the needs of the agency;
14 and

15 “(iii) the lessor is willing to continue to provide
16 the space at a fair market price determined by the
17 contracting officer on the basis of a market survey
18 or an appraisal conducted in accordance with gen-
19 erally accepted real property appraisal standards.

20 “(B) The authority under subparagraph (A) to use
21 procedures other than competitive procedures to enter into
22 a follow-on lease may be exercised not more than once to
23 provide for continued occupancy of particular space in real
24 property by a particular Federal agency. The period of
25 such follow-on lease may not exceed 5 years.

1 “(i) either a statement that the pro-
2 posals are intended to be evaluated with,
3 and award made after, discussions with the
4 offerors, or a statement that the proposals
5 are intended to be evaluated, and award
6 made, without discussions with the offerors
7 (other than discussions conducted for the
8 purpose of minor clarification) unless dis-
9 cussions are determined to be necessary;
10 and”;

11 (4) by adding at the end the following new sub-
12 section:

13 “(c)(1) In prescribing the evaluation factors to be in-
14 cluded in each solicitation for competitive proposals, an
15 agency head—

16 “(A) shall clearly establish the relative impor-
17 tance assigned to the evaluation factors and
18 subfactors, including the quality of the product or
19 services to be provided (including technical capabil-
20 ity, management capability, prior experience, and
21 past performance of the offeror);

22 “(B) shall include cost or price to the Govern-
23 ment as an evaluation factor that must be consid-
24 ered in the evaluation of proposals; and

1 “(C) shall disclose to offerors whether all eval-
2 uation factors other than cost or price, when com-
3 bined, are—

4 “(i) significantly more important than cost
5 or price;

6 “(ii) approximately equal in importance to
7 cost or price; or

8 “(iii) significantly less important than cost
9 or price.

10 “(2) Nothing in this subsection prohibits an agency
11 from—

12 “(A) providing additional information in a solici-
13 tation, including numeric weights for all evaluation
14 factors; or

15 “(B) stating in a solicitation that award will be
16 made to the offeror that meets the solicitation’s
17 mandatory requirements at the lowest price or
18 cost.”.

19 (b) EVALUATION AND AWARD.—Section 303B of the
20 Federal Property and Administrative Services Act of 1949
21 (41 U.S.C. 253b) is amended—

22 (1) in subsection (a), by inserting “, and award
23 a contract,” after “competitive proposals”;

1 (2) in subsection (c), by inserting “in accord-
2 ance with subsection (a)” in the second sentence
3 after “shall evaluate the bids”; and

4 (3) in subsection (d)—

5 (A) by striking out paragraph (1) and in-
6 serting in lieu thereof the following:

7 “(1) An agency head shall evaluate competitive pro-
8 posals in accordance with subsection (a) and may award
9 a contract—

10 “(A) after discussions with the offerors, pro-
11 vided that written or oral discussions have been con-
12 ducted with all responsible offerors who submit pro-
13 posals within the competitive range; or

14 “(B) based on the proposals received and with-
15 out discussions with the offerors (other than discus-
16 sions conducted for the purpose of minor clarifica-
17 tion), provided that, as required by section
18 303A(b)(2)(B)(i), the solicitation included a state-
19 ment that proposals are intended to be evaluated,
20 and award made, without discussions, unless discus-
21 sions are determined to be necessary.”;

22 (B) by striking out paragraphs (2) and (3)
23 and by redesignating paragraph (4) as para-
24 graph (2); and

1 (C) in paragraph (2), as redesignated by
2 subparagraph (B), by inserting “cost or” before
3 “price” in the first sentence.

4 (c) APPLICABILITY.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the amendments made by this section
7 shall apply to—

8 (A) solicitations for sealed bids or competi-
9 tive proposals issued after the end of the 180-
10 day period beginning on the date of the enact-
11 ment of this Act; and

12 (B) contracts awarded pursuant to those
13 solicitations.

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

22 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**
23 **TION OF PURCHASE OPTIONS.**

24 Section 303A of the Federal Property and Adminis-
25 trative Services Act of 1949 (41 U.S.C. 253a), as amend-

1 ed by section 1061(a)(4), is further amended by adding
2 at the end the following new subsection:

3 “(d) An agency head, in issuing a solicitation for a
4 contract to be awarded using sealed bid procedures, may
5 not include in such solicitation a clause providing for the
6 evaluation of prices for options to purchase additional
7 property or services under the contract unless the agency
8 head has determined that there is a reasonable likelihood
9 that the options will be exercised.”.

10 **SEC. 1063. PROMPT NOTICE OF AWARD.**

11 (a) SEALED BID PROCEDURES.—Subsection (c) of
12 section 303B of the Federal Property and Administrative
13 Services Act of 1949 (41 U.S.C. 253b) is amended by add-
14 ing at the end the following: “As soon as practicable after
15 the date of contract award, the agency head shall, in ac-
16 cordance with procedures prescribed in the Federal Acqui-
17 sition Regulation, notify all offerors not awarded the con-
18 tract that the contract has been awarded.”.

19 (b) COMPETITIVE PROPOSALS PROCEDURES.—Para-
20 graph (2) of section 303B(d) of the Federal Property and
21 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),
22 as redesignated by section 1061(b)(3)(B), is amended in
23 the second sentence by striking out “source and shall
24 promptly notify” and inserting in lieu thereof “source. As
25 soon as practicable after the date of contract award, the

1 agency head shall, in accordance with procedures pre-
2 scribed in the Federal Acquisition Regulation, notify”.

3 **SEC. 1064. POST-AWARD DEBRIEFINGS.**

4 Section 303B of the Federal Property and Adminis-
5 trative Services Act of 1949 (41 U.S.C. 253b) is amend-
6 ed—

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

9 (2) by inserting after subsection (d) the follow-
10 ing new subsection (e):

11 “(e)(1) When a contract is awarded by the head of
12 an executive agency on the basis of competitive proposals,
13 an unsuccessful offeror, upon written request received by
14 the agency within 3 days after the date on which the un-
15 successful offeror receives the notification of the contract
16 award, shall be debriefed and furnished the basis for the
17 selection decision and contract award. An employee of the
18 executive agency shall debrief the offeror promptly after
19 receipt of the request by the agency.

20 “(2) The debriefing shall include, at a minimum—

21 “(A) the executive agency’s evaluation of the
22 significant weak or deficient factors in the offeror’s
23 offer;

24 “(B) the overall evaluated cost and technical
25 rating of the offer of the contractor awarded the

1 contract and the overall evaluated cost and technical
2 rating of the offer of the debriefed offeror;

3 “(C) the overall ranking of all offers;

4 “(D) a summary of the rationale for the award;

5 “(E) in the case of a proposal that incorporates
6 equipment that is a commercial item, the make and
7 model of the item incorporated in the offer of the
8 contractor awarded the contract; and

9 “(F) reasonable responses to questions posed by
10 the debriefed offeror as to whether source selection
11 procedures set forth in the solicitation, applicable
12 regulations, and other applicable authorities were
13 followed by the executive agency.

14 “(3) The debriefing may not include point-by-point
15 comparisons of the debriefed offeror’s offer with other of-
16 fers and may not disclose any information that is exempt
17 from disclosure under section 552 of title 5, United States
18 Code, including information relating to—

19 “(A) trade secrets;

20 “(B) privileged or confidential manufacturing
21 processes and techniques; and

22 “(C) commercial and financial information that
23 is privileged or confidential, including cost break-
24 downs, profit, indirect cost rates, and similar infor-
25 mation.

1 “(4) Each solicitation for competitive proposals shall
2 include a statement that information described in para-
3 graph (2) may be disclosed in post-award debriefings.

4 “(5) If, within one year after the date of the contract
5 award and as a result of a successful procurement protest
6 or otherwise, the executive agency seeks to fulfill the re-
7 quirement under the contract either on the basis of a new
8 solicitation of offers or on the basis of new best and final
9 offers requested for that contract, the agency head shall
10 make available to all offerors—

11 “(A) the information provided in debriefings
12 under this subsection regarding the offer of the con-
13 tractor awarded the contract; and

14 “(B) the comparable debriefing information
15 that was prepared with respect to the original
16 offerors.

17 “(6) The contracting officer shall include a summary
18 of the debriefing in the contract file.”.

19 **SEC. 1065. PROTEST FILE.**

20 Section 303B of the Federal Property and Adminis-
21 trative Services Act of 1949 (41 U.S.C. 253b), as amend-
22 ed by section 1064(1), is further amended by adding at
23 the end the following:

24 “(h)(1) If, in the case of a solicitation for a contract
25 issued by, or an award or proposed award of a contract

1 by, an agency head, a protest is filed pursuant to the pro-
2 cedures in subchapter V of chapter 35 of title 31, United
3 States Code, and an actual or prospective offeror so re-
4 quests, a file of the protest shall be established by the pro-
5 curing activity and reasonable access shall be provided to
6 actual or prospective offerors.

7 “(2) Information exempt from disclosure under sec-
8 tion 552 of title 5, United States Code, may be redacted
9 in a file established pursuant to paragraph (1) unless an
10 applicable protective order provides otherwise.

11 “(3) Regulations implementing this subsection shall
12 be consistent with the regulations regarding the prepara-
13 tion and submission of an agency’s protest file (the so-
14 called ‘rule 4 file’) for protests to the General Services
15 Board of Contract Appeals under section 111 of the Fed-
16 eral Property and Administrative Services Act of 1949 (41
17 U.S.C. 759).”.

18 **SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
19 **MENT OF PROTESTS.**

20 Section 303B of the Federal Property and Adminis-
21 trative Services Act of 1949 (41 U.S.C. 253b), as amend-
22 ed by section 1065, is further amended by adding at the
23 end the following new subsection:

24 “(i) If, in connection with a protest, an agency head
25 determines that a solicitation, proposed award, or award

1 does not comply with the requirements of law or regula-
2 tion, the agency head may take—

3 “(1) any action set out in subparagraphs (A)
4 through (F) of subsection (b)(1) of section 3554 of
5 title 31, United States Code; and

6 “(2) may pay costs described in paragraph (1)
7 of section 3554(c) of such title within the limits re-
8 ferred to in paragraph (2) of such section.”.

9 **SEC. 1067. TWO-PHASE SELECTION PROCEDURES.**

10 (a) PROCEDURES AUTHORIZED.—Title III of the
11 Federal Property and Administrative Services Act of 1949
12 (41 U.S.C. 251 et seq.), as amended by section 1054, is
13 further amended by inserting after section 303H the fol-
14 lowing new section:

15 “TWO-PHASE SELECTION PROCEDURES

16 “SEC. 303I. (a) PROCEDURES AUTHORIZED.—The
17 head of an executive agency may use two-phase selection
18 procedures for entering into a contract for the acquisition
19 of property or services when the agency head determines
20 that three or more offers will be received for such contract,
21 substantial design work must be performed before an
22 offeror can develop a price or cost proposal for such con-
23 tract, and the offerors will incur a substantial amount of
24 expenses in preparing the offers.

25 “(b) PROCEDURES DESCRIBED.—Two-phase selec-
26 tion procedures consist of the following:

1 “(1) The agency head solicits proposals that—

2 “(A) include information on the offerors’—

3 “(i) technical approach; and

4 “(ii) technical qualifications; and

5 “(B) do not include—

6 “(i) detailed design information; or

7 “(ii) cost or price information.

8 “(2) The agency head evaluates the proposals
9 on the basis of evaluation criteria set forth in the so-
10 licitation, except that the agency head does not con-
11 sider cost-related or price-related evaluation factors.

12 “(3) The agency head selects at least three
13 offerors as the most highly qualified to provide the
14 property or services under the contract and requests
15 the selected offerors to submit competitive proposals
16 that include cost or price information.

17 “(4) The agency head awards the contract in
18 accordance with section 303B(d).

19 “(c) RESOURCE COMPARISON CRITERION RE-
20 QUIRED.—In using two-phase selection procedures for en-
21 tering into a contract, the agency head shall establish a
22 resource criterion or a financial criterion applicable to the
23 contract in order to provide a consistent basis for compar-
24 ing the offerors and their proposals.

1 “(d) TWO-PHASE SELECTION PROCEDURES DE-
 2 FINED.—In this section, the term ‘two-phase selection pro-
 3 cedures’ means procedures described in subsection (b) that
 4 are used for the selection of a contractor on the basis of
 5 cost or price and other evaluation criteria to provide prop-
 6 erty or services in accordance with the provisions of a con-
 7 tract which requires the contractor to design the property
 8 to be acquired under the contract and produce or con-
 9 struct such property.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
 11 in the first section of such Act, as amended by section
 12 1054, is further amended by inserting after the item relat-
 13 ing to section 303H the following new item:

“Sec. 303I. Two-phase selection procedures.”.

14 **Subpart C—Kinds of Contracts**

15 **SEC. 1071. AGENCY HEAD DETERMINATION REGARDING**
 16 **USE OF COST TYPE OR INCENTIVE CON-**
 17 **TRACT.**

18 Section 304(b) of the Federal Property and Adminis-
 19 trative Services Act of 1949 (41 U.S.C. 254(b)) is amend-
 20 ed by striking out the second sentence.

21 **SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.**

22 (a) AUTHORITY.—Title III of the Federal Property
 23 and Administrative Services Act of 1949 (41 U.S.C. 251
 24 et seq.), as amended by section 1067, is further amended
 25 by inserting after section 303I the following new section:

1 “MULTIYEAR CONTRACTS

2 “SEC. 303J. (a) AUTHORITY.—The head of an execu-
3 tive agency may enter into a multiyear contract for the
4 acquisition of property or services if—

5 “(1) funds are available and obligated for such
6 contract, for the full period of the contract or for the
7 first fiscal year in which the contract is in effect,
8 and for the estimated costs associated with any nec-
9 essary termination of such contract; and

10 “(2) the agency head determines that—

11 “(A) the need for the property or services
12 is reasonably firm and continuing over the pe-
13 riod of the contract; and

14 “(B) a multiyear contract will serve the
15 best interests of the United States by encourag-
16 ing effective competition or promoting economy
17 in administration, performance, and operation
18 of the agency’s programs.

19 “(b) TERMINATION CLAUSE.—A multiyear contract
20 entered into under the authority of this section shall in-
21 clude a clause that provides that the contract shall be ter-
22 minated if funds are not made available for the continu-
23 ation of such contract in any fiscal year covered by the
24 contract. Amounts available for paying termination costs

1 shall remain available for such purpose until the costs as-
 2 sociated with termination of the contract are paid.

3 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
 4 tion is intended to modify or affect any other provision
 5 of law that authorizes multiyear contracts.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
 7 in the first section of such Act, as amended by section
 8 1067, is further amended by inserting after the item relat-
 9 ing to section 303I the following new item:

“Sec. 303J. Multiyear contracts.”.

10 **SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING**
 11 **FISCAL YEARS.**

12 (a) AUTHORITY.—Title III of the Federal Property
 13 and Administrative Services Act of 1949 (41 U.S.C. 251
 14 et seq.), as amended by section 1072, is further amended
 15 by inserting after section 303J the following new section:

16 “SEVERABLE SERVICES CONTRACTS FOR PERIODS
 17 CROSSING FISCAL YEARS

18 “SEC. 303K. (a) AUTHORITY.—The head of an exec-
 19 utive agency may enter into a severable contract for pro-
 20 curement of services for a period that begins in one fiscal
 21 year and ends in the next fiscal year if (without regard
 22 to any option to extend the period of the contract) the
 23 contract period does not exceed one year.

24 “(b) AVAILABILITY OF FUNDS.—To the extent pro-
 25 vided in appropriations Acts, funds obligated for a con-

1 tract entered into under the authority of subsection (a)
2 shall remain available until no longer needed to pay for
3 such contract.

4 “(c) SEVERABLE CONTRACT DEFINED.—In this sec-
5 tion, the term ‘severable contract’ means a contract that
6 contains a clause that makes the effectiveness of the con-
7 tract for periods after the end of the fiscal year in which
8 the performance of the contract begins subject to the
9 availability of appropriations.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
11 in the first section of such Act, as amended by section
12 1072, is further amended by inserting after the item relat-
13 ing to section 303J the following new item:

“Sec. 303K. Severable services contracts for periods crossing fiscal years.”.

14 **SEC. 1074. ECONOMY ACT PURCHASES.**

15 (a) REGULATIONS REQUIRED.—Not later than six
16 months after the date of the enactment of this Act, the
17 Federal Acquisition Regulation shall be revised to include
18 regulations governing the exercise of the authority under
19 section 1535 of title 31, United States Code, for Federal
20 agencies to purchase goods and services under contracts
21 entered into or administered by other agencies.

22 (b) CONTENT OF REGULATIONS.—The regulations
23 prescribed pursuant to subsection (a) shall—

24 (1) require that each purchase described in sub-
25 section (a) be approved in advance by a contracting

1 officer of the ordering agency with authority to con-
2 tract for the goods or services to be purchased or by
3 another official in a position specifically designated
4 by regulation to approve such purchase;

5 (2) provide that such a purchase of goods or
6 services may be made only if—

7 (A) the purchase is appropriately made
8 under a contract that the agency filling the pur-
9 chase order entered into, before the purchase
10 order, in order to meet the requirements of
11 such agency for the same or similar goods or
12 services;

13 (B) the agency filling the purchase order is
14 better qualified to enter into or administer the
15 contract for such goods or services by reason of
16 capabilities or expertise that is not available
17 within the ordering agency; or

18 (C) the agency or unit filling the order is
19 specifically authorized by law or regulations to
20 purchase such goods or services on behalf of
21 other agencies;

22 (3) prohibit any such purchase under a contract
23 or other agreement entered into or administered by
24 an agency not covered by the provisions of chapter
25 137 of title 10, United States Code, or title III of

1 the Federal Property and Administrative Services
2 Act of 1949 (41 U.S.C. 251 et seq.) and not covered
3 by the Federal Acquisition Regulation unless the
4 purchase is approved in advance by the senior pro-
5 curement official responsible for purchasing by the
6 ordering agency; and

7 (4) prohibit any payment to the agency filling
8 a purchase order of any fee that exceeds the actual
9 cost or, if the actual cost is not known, the esti-
10 mated cost of entering into and administering the
11 contract or other agreement under which the order
12 is filled.

13 (c) MONITORING SYSTEM REQUIRED.—The Adminis-
14 trator for Federal Procurement Policy shall ensure that,
15 not later than one year after the date of the enactment
16 of this Act, systems for collecting and evaluating procure-
17 ment data are capable of collecting and evaluating appro-
18 priate data on procurements conducted under the regula-
19 tions prescribed pursuant to subsection (a).

20 (d) TERMINATION.—This section shall cease to be ef-
21 fective one year after the date on which final regulations
22 prescribed pursuant to subsection (a) take effect.

1 **PART III—ACQUISITIONS GENERALLY**

2 **SEC. 1091. POLICY REGARDING CONSIDERATION OF CON-**
3 **TRACTOR PAST PERFORMANCE.**

4 (a) POLICY.—Section 2 of the Office of Federal Pro-
5 curement Policy Act (41 U.S.C. 401) is amended—

6 (1) by striking out “and” at the end of para-
7 graph (12);

8 (2) by striking out the period at the end of
9 paragraph (13) and inserting in lieu thereof “; and”;
10 and

11 (3) by adding at the end the following new
12 paragraph:

13 “(14) establishing policies and procedures that
14 encourage the consideration of contractors’ past per-
15 formance in the selection of contractors.”.

16 (b) GUIDANCE REQUIRED.—Section 6 of the Office
17 of Federal Procurement Policy Act (41 U.S.C. 405) is
18 amended by adding at the end the following:

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

20 “(A) Past contract performance of an offeror is
21 one of the relevant factors that contracting officials
22 of executive agencies should consider in entering into
23 contracts.

24 “(B) It is appropriate for a contracting official
25 to consider past contract performance of an offeror
26 as an indicator of the likelihood that the offeror will

1 successfully perform a contract to be entered into by
2 that official.

3 “(2) The Administrator shall prescribe for executive
4 agencies guidance regarding consideration of the past con-
5 tract performance of offerors in awarding contracts. The
6 guidance shall include—

7 “(A) standards for evaluating past performance
8 with respect to cost (when appropriate), schedule,
9 compliance with technical or functional specifica-
10 tions, and other relevant performance factors that
11 facilitate consistent and fair evaluation by all execu-
12 tive agencies;

13 “(B) policies for the collection and maintenance
14 of information on past contract performance that, to
15 the maximum extent practicable, facilitate auto-
16 mated collection, maintenance, and dissemination of
17 information and provide for ease of collection, main-
18 tenance, and dissemination of information by other
19 methods, as necessary; and

20 “(C) policies for ensuring that offerors are af-
21 forded an opportunity to submit information on past
22 contract performance and that information submit-
23 ted by offerors is considered.

24 “(3) The Administrator shall prescribe for all execu-
25 tive agencies the policy regarding the period for which in-

1 formation on past performance of offerors may be main-
2 tained and considered.

3 “(4) In the case of an offeror regarding whom there
4 is no information on past contract performance or regard-
5 ing whom information on past contract performance is not
6 available, the offeror may not be evaluated favorably or
7 unfavorably on the factor of past contract performance.”.

8 **SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
9 **PORT ON COMPETITION.**

10 Section 23 of the Office of Federal Procurement Pol-
11 icy Act (41 U.S.C. 419) is repealed.

12 **Subtitle B—Truth in Negotiations**

13 **PART I—ARMED SERVICES ACQUISITIONS**

14 **SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-**
15 **PLICABILITY.**

16 (a) REPEAL OF REVERSION TO LOWER THRESH-
17 OLD.—Paragraph (1)(A) of section 2306a(a) of title 10,
18 United States Code, is amended—

19 (1) in clause (i), by striking out “and before
20 January 1, 1996,”; and

21 (2) in clause (ii), by striking out “or after De-
22 cember 31, 1995,”.

23 (b) ADJUSTMENTS FOR CHANGES IN DOLLAR VAL-
24 UES.—Section 2306a(a) of such title is amended by add-
25 ing at the end the following new subparagraph:

1 “(7) Effective on October 1 of each year that is divis-
2 ible by 5, each amount set forth in paragraph (1) shall
3 be adjusted to the amount that is equal to the fiscal year
4 1994 constant dollar value of the amount set forth. Any
5 amount, as so adjusted, that is not evenly divisible by
6 \$50,000 shall be rounded to the nearest multiple of
7 \$50,000. In the case of an amount that is evenly divisible
8 by \$25,000 but not evenly divisible by \$50,000, the
9 amount shall be rounded to the next higher multiple of
10 \$50,000.”.

11 **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**
12 **QUIREMENTS.**

13 (a) EXCEPTIONS STATED.—Subsection (b) of section
14 2306a of title 10, United States Code, is amended to read
15 as follows:

16 “(b) EXCEPTIONS.—(1) Submission of cost and pric-
17 ing data shall not be required under subsection (a)—

18 “(A) in the case of a contract, a subcontract,
19 or a contract or subcontract modification, for which
20 the price agreed upon is based on—

21 “(i) adequate price competition;

22 “(ii) established catalog or market prices
23 of commercial items or of services customarily
24 used for other than Government purposes, as

1 the case may be, that are sold in substantial
2 quantities to the general public; or

3 “(iii) prices set by law or regulation; or

4 “(B) in an exceptional case when the head of
5 the agency concerned determines that the require-
6 ments of this section may be waived and states in
7 writing the reasons for such determination.

8 “(2) Submission of cost and pricing data shall not
9 be required under subsection (a) in the case of a modifica-
10 tion of a contract or subcontract for a commercial item
11 if—

12 “(A) the contract or subcontract being modified
13 is a contract or subcontract for which submission of
14 cost and pricing data may not be required by reason
15 of paragraph (1)(A);

16 “(B) the modification is not a case in which
17 paragraph (1)(A) prohibits the head of an agency
18 from requiring submission of cost and pricing data;
19 and

20 “(C) the modification would not change the
21 contract or subcontract, as the case may be, from a
22 contract or subcontract for the acquisition of a com-
23 mercial item to a contract or subcontract for the ac-
24 quisition of a noncommercial item.”.

1 (b) CONFORMING AMENDMENT TO REFERENCE.—
2 Subsection (a)(5) of such section is amended by striking
3 out “subsection (b)(2)” and inserting in lieu thereof “sub-
4 section (b)(1)(B)”.

5 **SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUB-**
6 **MISSION NOT OTHERWISE REQUIRED.**

7 Subsection (c) of section 2306a of title 10, United
8 States Code, is amended to read as follows:

9 “(c) LIMITATION ON AUTHORITY TO REQUIRE COST
10 OR PRICING DATA.—When cost or pricing data are not
11 required to be submitted under this section by reason of
12 a \$500,000 threshold set forth in subsection (a) (as ad-
13 justed pursuant to paragraph (7) of such subsection) or
14 by reason of an exception set forth in paragraph (1)(A)
15 or (2) of subsection (b), submission of such data may not
16 be required unless the head of an agency concerned deter-
17 mines that such data are necessary for the evaluation by
18 the agency of the reasonableness of the price of the con-
19 tract or subcontract to which the data relate. In any case
20 in which the head of an agency requires such data to be
21 submitted in accordance with the preceding sentence, the
22 agency head shall document in writing the reasons for
23 such requirement.”.

1 **SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**
2 **ITEMS.**

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

5 (1) by redesignating subsections (d), (e), (f),
6 and (g) as subsections (e), (f), (g), and (i), respec-
7 tively; and

8 (2) by inserting after subsection (c) the follow-
9 ing new subsection (d):

10 “(d) ADDITIONAL EXCEPTION PROVISIONS REGARD-
11 ING COMMERCIAL ITEMS.—(1) To the maximum extent
12 practicable, the head of an agency shall conduct procure-
13 ments of commercial items on a competitive basis.

14 “(2) In any case in which it is not practicable to con-
15 duct a procurement of a commercial item on a competitive
16 basis and the procurement is not covered by an exception
17 in subsection (b), the contracting officer shall nonetheless
18 exempt a contract, subcontract, or modification of a con-
19 tract or subcontract under the procurement from the re-
20 quirements of subsection (a) if the contracting officer de-
21 velops or obtains from the offeror or contractor, or from
22 another source or sources, in accordance with standards
23 and procedures set forth in the Federal Acquisition Regu-
24 lation, information on prices at which the same or similar
25 items have been sold in the commercial market that is ade-
26 quate for evaluating the reasonableness of the price of the

1 contract or subcontract for a commercial item, or the con-
2 tract or subcontract modification, as the case may be.

3 “(3)(A) In accordance with procedures prescribed in
4 the Federal Acquisition Regulation, the head of an agency
5 shall have the right to examine all information provided
6 by an offeror, contractor, or subcontractor pursuant to
7 paragraph (2) and all books and records of such offeror,
8 contractor, or subcontractor that directly relate to such
9 information in order to determine whether the agency is
10 receiving accurate information required under this section.

11 “(B) The right under subparagraph (A) shall expire
12 3 years after the date of award of the contract, or 3 years
13 after the date of the modification of the contract, with
14 respect to which the information was provided.”.

15 **SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CON-**
16 **TRACTOR RECORDS.**

17 Section 2306a of title 10, United States Code, is
18 amended by striking out subsection (g), as redesignated
19 by section 1204(1), and inserting in lieu thereof the fol-
20 lowing:

21 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
22 TRACTOR RECORDS.—For the purpose of evaluating the
23 accuracy, completeness, and currency of cost or pricing
24 data required to be submitted by this section, the head

1 of an agency shall have the rights provided by section
2 2313 of this title.”.

3 **SEC. 1206. REQUIRED REGULATIONS.**

4 Section 2306a of title 10, United States Code, as
5 amended by sections 1204 and 1205, is further amended
6 by inserting after subsection (g) the following new sub-
7 section:

8 “(h) **REQUIRED REGULATIONS.**—The Secretary shall
9 prescribe regulations concerning the types of information
10 that offerors must submit for a contracting officer to con-
11 sider in determining whether the price of a procurement
12 to the Government is fair and reasonable when certified
13 cost or pricing data are not required to be submitted
14 under this section because the price of the procurement
15 to the United States is not expected to exceed an applica-
16 ble \$500,000 threshold set forth in subsection (a) (as ad-
17 justed pursuant to paragraph (7) of such subsection).
18 Such information, at a minimum, shall include appropriate
19 information on the prices at which such offeror has pre-
20 viously sold the same or similar products.”.

21 **SEC. 1207. CONSISTENCY OF TIME REFERENCES.**

22 Section 2306a of title 10, United States Code, as
23 amended by section 1204(1), is further amended—

24 (1) in subparagraphs (A)(ii) and (B)(ii) of sub-
25 section (e)(4), by inserting “or, if applicable consist-

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

4 (2) in subsection (i), by inserting “or, if appli-
5 cable consistent with subsection (d)(1)(B), another
6 date agreed upon between the parties” after “(or the
7 price of a contract modification)”.

8 **SEC. 1208. EXCEPTION FOR TRANSFERS BETWEEN DIVI-**
9 **SIONS, SUBSIDIARIES, AND AFFILIATES.**

10 Subsection (i) of section 2306a of title 10, United
11 States Code, as redesignated by section 1204(1), is
12 amended to read as follows:

13 “(i) DEFINITIONS.—In this section:

14 “(1) The term ‘cost or pricing data’ means all
15 facts that, as of the date of agreement on the price
16 of a contract (or the price of a contract modifica-
17 tion), a prudent buyer or seller would reasonably ex-
18 pect to affect price negotiations significantly. Such
19 term does not include information that is
20 judgmental, but does include the factual information
21 from which a judgment was derived.

22 “(2) The term ‘subcontract’ includes a transfer
23 of commercial items between divisions, subsidiaries,
24 or affiliates of a contractor.”.

1 **SEC. 1209. REPEAL OF SUPERSEDED PROVISION.**

2 Subsections (b) and (c) of section 803 of Public Law
3 101–510 (10 U.S.C. 2306a note) are repealed.

4 **PART II—CIVILIAN AGENCY ACQUISITIONS**

5 **SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO**

6 **ENSURE UNIFORM TREATMENT OF COST OR**

7 **PRICING DATA.**

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

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

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

15 “COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

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

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

25 “(i) in the case of a prime contract entered
26 into after the date of the enactment of the Fed-

1 eral Acquisition Streamlining Act of 1994, the
2 price of the contract to the United States is ex-
3 pected to exceed \$500,000; and

4 “(ii) in the case of a prime contract en-
5 tered into on or before the date of the enact-
6 ment of the Federal Acquisition Streamlining
7 Act of 1994, the price of the contract to the
8 United States is expected to exceed \$100,000.

9 “(B) The contractor for a prime contract under
10 this chapter shall be required to submit cost or pric-
11 ing data before the pricing of a change or modifica-
12 tion to the contract if—

13 “(i) in the case of a change or modification
14 made to a prime contract referred to in sub-
15 paragraph (A)(i), the price adjustment is ex-
16 pected to exceed \$500,000;

17 “(ii) in the case of a change or modifica-
18 tion made to a prime contract that was entered
19 into on or before the date of the enactment of
20 the Federal Acquisition Streamlining Act of
21 1994, and that has been modified pursuant to
22 paragraph (6), the price adjustment is expected
23 to exceed \$500,000; and

1 “(iii) in the case of a change or modifica-
2 tion not covered by clause (i) or (ii), the price
3 adjustment is expected to exceed \$100,000.

4 “(C) An offeror for a subcontract (at any tier)
5 of a contract under this title shall be required to
6 submit cost or pricing data before the award of the
7 subcontract if the prime contractor and each higher-
8 tier subcontractor have been required to make avail-
9 able cost or pricing data under this section and—

10 “(i) in the case of a subcontract under a
11 prime contract referred to in subparagraph
12 (A)(i), the price of the subcontract is expected
13 to exceed \$500,000;

14 “(ii) in the case of a subcontract entered
15 into under a prime contract that was entered
16 into on or before the date of the enactment of
17 the Federal Acquisition Streamlining Act of
18 1994, and that has been modified pursuant to
19 paragraph (6), the price of the subcontract is
20 expected to exceed \$500,000; and

21 “(iii) in the case of a subcontract not cov-
22 ered by clause (i) or (ii), the price of the sub-
23 contract is expected to exceed \$100,000.

24 “(D) The subcontractor for a subcontract cov-
25 ered by subparagraph (C) shall be required to sub-

1 mit cost or pricing data before the pricing of a
2 change or modification to the subcontract if—

3 “(i) in the case of a change or modification
4 to a subcontract referred to in subparagraph
5 (C)(i) or (C)(ii), the price adjustment is ex-
6 pected to exceed \$500,000; and

7 “(ii) in the case of a change or modifica-
8 tion to a subcontract referred to in subpara-
9 graph (C)(iii), the price adjustment is expected
10 to exceed \$100,000.

11 “(2) A person required, as an offeror, contractor, or
12 subcontractor, to submit cost or pricing data under para-
13 graph (1) (or required by the agency head concerned to
14 submit such data in accordance with subsection (c)) shall
15 be required to certify that, to the best of the person’s
16 knowledge and belief, the cost or pricing data submitted
17 are accurate, complete, and current.

18 “(3) Cost or pricing data required to be submitted
19 under paragraph (1) (or in accordance with subsection
20 (c)), and a certification required to be submitted under
21 paragraph (2), shall be submitted—

22 “(A) in the case of a submission by a prime
23 contractor (or an offeror for a prime contract), to
24 the contracting officer for the contract (or to a des-
25 ignated representative of the contracting officer); or

1 “(B) in the case of a submission by a sub-
2 contractor (or an offeror for a subcontract), to the
3 prime contractor.

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

7 “(5) For purposes of paragraph (1)(C), a contractor
8 or subcontractor granted a waiver under subsection
9 (b)(1)(B) shall be considered as having been required to
10 make available cost or pricing data under this section.

11 “(6)(A) Upon the request of a contractor that was
12 required to submit cost or pricing data under paragraph
13 (1) in connection with a prime contract entered into on
14 or before the date of the enactment of the Federal Acquisi-
15 tion Streamlining Act of 1994, the agency head that en-
16 tered into such contract shall modify the contract to re-
17 flect subparagraphs (B)(ii) and (C)(ii) of paragraph (1).
18 All such modifications shall be made without requiring
19 consideration.

20 “(B) An agency head is not required to modify a con-
21 tract under subparagraph (A) if that agency head deter-
22 mines that the submission of cost or pricing data with re-
23 spect to that contract should be required in accordance
24 with subsection (c).

1 “(7) Effective on October 1 of each year that is divis-
2 ible by 5, each amount set forth in paragraph (1) shall
3 be adjusted to the amount that is equal to the fiscal year
4 1994 constant dollar value of the amount set forth. Any
5 amount, as so adjusted, that is not evenly divisible by
6 \$50,000 shall be rounded to the nearest multiple of
7 \$50,000. In the case of an amount that is evenly divisible
8 by \$25,000 but not evenly divisible by \$50,000, the
9 amount shall be rounded to the next higher multiple of
10 \$50,000.

11 “(b) EXCEPTIONS.—(1) Submission of cost and pric-
12 ing data shall not be required under subsection (a)—

13 “(A) in the case of a contract, a subcontract,
14 or a contract or subcontract modification, for which
15 the price agreed upon is based on—

16 “(i) adequate price competition;

17 “(ii) established catalog or market prices
18 of commercial items or of services customarily
19 used for other than Government purposes, as
20 the case may be, that are sold in substantial
21 quantities to the general public; or

22 “(iii) prices set by law or regulation; or

23 “(B) in an exceptional case when the agency
24 head concerned determines that the requirements of

1 this section may be waived and states in writing the
2 reasons for such determination.

3 “(2) Submission of cost and pricing data shall not
4 be required under subsection (a) in the case of a modifica-
5 tion of a contract or subcontract for a commercial item
6 if—

7 “(A) the contract or subcontract being modified
8 is a contract or subcontract for which submission of
9 cost and pricing data may not be required by reason
10 of paragraph (1)(A);

11 “(B) the modification is not a case in which
12 paragraph (1)(A) prohibits the agency head from re-
13 quiring submission of cost and pricing data; and

14 “(C) the modification would not change the
15 contract or subcontract, as the case may be, from a
16 contract or subcontract for the acquisition of a com-
17 mercial item to a contract or subcontract for the ac-
18 quisition of a noncommercial item.

19 “(c) LIMITATION ON AUTHORITY TO REQUIRE COST
20 OR PRICING DATA.—When cost or pricing data are not
21 required to be submitted under this section by reason of
22 a \$500,000 threshold set forth in subsection (a) (as ad-
23 justed pursuant to paragraph (7) of such subsection) or
24 by reason of an exception in paragraph (1)(A) or (2) of
25 subsection (b), submission of such data may not be re-

1 quired unless the agency head concerned determines that
2 such data are necessary for the evaluation by the agency
3 of the reasonableness of the price of the contract or sub-
4 contract to which the data relate. In any case in which
5 the agency head requires such data to be submitted in ac-
6 cordance with the preceding sentence, the agency head
7 shall document in writing the reasons for such require-
8 ment.

9 “(d) ADDITIONAL EXCEPTION PROVISIONS REGARD-
10 ING COMMERCIAL ITEMS.—(1) To the maximum extent
11 practicable, an agency head shall conduct procurements
12 of commercial items on a competitive basis.

13 “(2) In any case in which it is not practicable to con-
14 duct a procurement of a commercial item on a competitive
15 basis and the procurement is not covered by an exception
16 in subsection (b), the contracting officer shall nonetheless
17 exempt a contract, subcontract, or modification of a con-
18 tract or subcontract under the procurement from the re-
19 quirements of subsection (a) if the contracting officer de-
20 velops or obtains from the offeror or contractor, or from
21 another source or sources, in accordance with standards
22 and procedures set forth in the Federal Acquisition Regu-
23 lation, information on prices at which the same or similar
24 items have been sold in the commercial market that is ade-
25 quate for evaluating the reasonableness of the price of the

1 contract or subcontract for a commercial item, or the con-
2 tract or subcontract modification, as the case may be.

3 “(3)(A) In accordance with procedures prescribed in
4 the Federal Acquisition Regulation, an agency head shall
5 have the right to examine all information provided by an
6 offeror, contractor, or subcontractor pursuant to para-
7 graph (2) and all books and records of such offeror, con-
8 tractor, or subcontractor that directly relate to such infor-
9 mation in order to determine whether the agency is receiv-
10 ing accurate information required under this section.

11 “(B) The right under subparagraph (A) shall expire
12 3 years after the date of award of the contract, or 3 years
13 after the date of the modification of the contract, with
14 respect to which the information was provided.

15 “(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR
16 PRICING DATA.—(1)(A) A prime contract (or change or
17 modification to a prime contract) under which a certificate
18 under subsection (a)(2) is required shall contain a provi-
19 sion that the price of the contract to the United States,
20 including profit or fee, shall be adjusted to exclude any
21 significant amount by which it may be determined by the
22 agency head that such price was increased because the
23 contractor (or any subcontractor required to make avail-
24 able such a certificate) submitted defective cost or pricing
25 data.

1 “(B) For the purposes of this section, defective cost
2 or pricing data are cost or pricing data which, as of the
3 date of agreement on the price of the contract (or another
4 date agreed upon between the parties), were inaccurate,
5 incomplete, or noncurrent. If for purposes of the preceding
6 sentence the parties agree upon a date other than the date
7 of agreement on the price of the contract, the date agreed
8 upon by the parties shall be as close to the date of agree-
9 ment on the price of the contract as is practicable.

10 “(2) In determining for purposes of a contract price
11 adjustment under a contract provision required by para-
12 graph (1) whether, and to what extent, a contract price
13 was increased because the contractor (or a subcontractor)
14 submitted defective cost or pricing data, it shall be a de-
15 fense that the United States did not rely on the defective
16 data submitted by the contractor or subcontractor.

17 “(3) It is not a defense to an adjustment of the price
18 of a contract under a contract provision required by para-
19 graph (1) that—

20 “(A) the price of the contract would not have
21 been modified even if accurate, complete, and cur-
22 rent cost or pricing data had been submitted by the
23 contractor or subcontractor because the contractor
24 or subcontractor—

1 “(i) was the sole source of the property or
2 services procured; or

3 “(ii) otherwise was in a superior bargain-
4 ing position with respect to the property or
5 services procured;

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

11 “(C) the contract was based on an agreement
12 between the contractor and the United States about
13 the total cost of the contract and there was no
14 agreement about the cost of each item procured
15 under such contract; or

16 “(D) the prime contractor or subcontractor did
17 not submit a certification of cost and pricing data
18 relating to the contract as required under subsection
19 (a)(2).

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

23 “(i) the contractor certifies to the contracting
24 officer (or to a designated representative of the con-
25 tracting officer) that, to the best of the contractor’s

1 knowledge and belief, the contractor is entitled to
2 the offset; and

3 “(ii) the contractor proves that the cost or pric-
4 ing data were available before the date of agreement
5 on the price of the contract (or price of the modi-
6 fication), or, if applicable consistent with paragraph
7 (1)(B), another date agreed upon between the par-
8 ties, and that the data were not submitted as speci-
9 fied in subsection (a)(3) before such date.

10 “(B) A contractor shall not be allowed to offset an
11 amount otherwise authorized to be offset under subpara-
12 graph (A) if—

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

16 “(ii) the United States proves that, had the cost
17 or pricing data referred to in subparagraph (A)(ii)
18 been submitted to the United States before the date
19 of agreement on the price of the contract (or price
20 of the modification) or, if applicable under para-
21 graph (1)(B), another date agreed upon between the
22 parties, the submission of such cost or pricing data
23 would not have resulted in an increase in that price
24 in the amount to be offset.

1 “(f) INTEREST AND PENALTIES FOR CERTAIN OVER-
2 PAYMENTS.—(1) If the United States makes an overpay-
3 ment to a contractor under a contract with an executive
4 agency subject to this section and the overpayment was
5 due to the submission by the contractor of defective cost
6 or pricing data, the contractor shall be liable to the United
7 States—

8 “(A) for interest on the amount of such over-
9 payment, to be computed—

10 “(i) for the period beginning on the date
11 the overpayment was made to the contractor
12 and ending on the date the contractor repays
13 the amount of such overpayment to the United
14 States; and

15 “(ii) at the current rate prescribed by the
16 Secretary of the Treasury under section 6621
17 of the Internal Revenue Code of 1986; and

18 “(B) if the submission of such defective data
19 was a knowing submission, for an additional amount
20 equal to the amount of the overpayment.

21 “(2) Any liability under this subsection of a contrac-
22 tor that submits cost or pricing data but refuses to submit
23 the certification required by subsection (a)(2) with respect
24 to the cost or pricing data shall not be affected by the
25 refusal to submit such certification.

1 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
2 TRACTOR RECORDS.—For the purpose of evaluating the
3 accuracy, completeness, and currency of cost or pricing
4 data required to be submitted by this section, the head
5 of an agency shall have the rights provided by section
6 304B(a)(2).

7 “(h) REQUIRED REGULATIONS.—The Federal Acqui-
8 sition Regulation shall include regulations concerning the
9 types of information that offerors must submit for a con-
10 tracting officer to consider in determining whether the
11 price of a procurement to the Government is fair and rea-
12 sonable when certified cost or pricing data are not re-
13 quired to be submitted under this section because the price
14 of the procurement to the United States is not expected
15 to exceed an applicable \$500,000 threshold set forth in
16 subsection (a) (as adjusted pursuant to paragraph (7) of
17 such subsection). Such information, at a minimum, shall
18 include appropriate information on the prices at which
19 such offeror has previously sold the same or similar prod-
20 ucts.

21 “(i) DEFINITIONS.—In this section:

22 “(1) The term ‘cost or pricing data’ means all
23 facts that, as of the date of agreement on the price
24 of a contract (or the price of a contract modifica-
25 tion) or, if applicable consistent with subsection

1 (e)(1)(B), another date agreed upon between the
2 parties, a prudent buyer or seller would reasonably
3 expect to affect price negotiations significantly. Such
4 term does not include information that is
5 judgmental, but does include the factual information
6 from which a judgment was derived.

7 “(2) The term ‘subcontract’ includes a transfer
8 of commercial items between divisions, subsidiaries,
9 or affiliates of a contractor.”.

10 (b) TABLE OF CONTENTS.—The table of contents in
11 the first section of such Act is amended by inserting after
12 the item relating to section 304 the following:

“Sec. 304A. Cost or pricing data: truth in negotiations.”.

13 **SEC. 1252. REPEAL OF OBSOLETE PROVISION.**

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

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

20 **Subtitle C—Research and**
21 **Development**

22 **SEC. 1301. RESEARCH PROJECTS.**

23 (a) AUTHORIZED MEANS.—Subsection (b) of section
24 2358 of title 10, United States Code, is amended to read
25 as follows:

1 “(b) AUTHORIZED MEANS.—The Secretary of De-
2 fense or the Secretary of a military department may per-
3 form research and development projects—

4 “(1) by contract entered into with, grant made
5 to, or cooperative agreement entered into with edu-
6 cational or research institutions, private businesses,
7 or other persons in accordance with the provisions of
8 chapter 63 of title 31;

9 “(2) through one or more military departments;

10 “(3) by using employees and consultants of the
11 Department of Defense; or

12 “(4) by mutual agreement with the head of any
13 other department or agency of the Federal Govern-
14 ment.”.

15 (b) CAPTION AMENDMENT.—The caption of sub-
16 section (c) of such section is amended by striking out
17 “MILITARY” and inserting in lieu thereof “DEPARTMENT
18 OF DEFENSE”.

19 (c) ADVANCED RESEARCH PROJECTS.—

20 (1) RESTORATION AND REVISION OF FORMER
21 STATEMENT OF AUTHORITY.—Section 2371 of title
22 10, United States Code, is amended—

23 (A) by redesignating subsections (a), (b),

24 (c), (d), (e), and (f) as subsections (b), (c), (d),

25 (e), (f), and (g), respectively; and

1 (B) by inserting before subsection (b), as
2 so redesignated, the following new subsection

3 (a):

4 “(a) The Secretary of Defense, acting through the
5 Advanced Research Projects Agency and such other ele-
6 ments of the Department of Defense as the Secretary may
7 designate, and the Secretary of each military department,
8 in carrying out basic, applied, and advanced research
9 projects, may enter into other transactions, in addition to
10 contracts, grants, and cooperative agreements authorized
11 by section 2358 of this title.”.

12 (2) CONFORMING AMENDMENTS.—Such section,
13 as amended by paragraph (1), is further amended—

14 (A) in subsection (b)—

15 (i) in paragraph (1), by inserting “or
16 subsection (a)” after “section 2358 of this
17 title”; and

18 (ii) in paragraph (2), by striking out
19 “subsection (d)” and inserting in lieu
20 thereof “subsection (e)”;

21 (B) in subsection (c), by inserting “section
22 2358 of this title or” after “under”;

23 (C) in subsection (d)—

24 (i) in paragraph (1), by striking out
25 “this section” and inserting in lieu thereof

1 “section 2358 of this title or subsection
2 (a)”; and

3 (ii) in paragraph (3), by striking out
4 “this section” and inserting in lieu thereof
5 “section 2358 of this title or subsection
6 (a)”; and

7 (D) in subsection (e), by inserting “or sub-
8 section (a)” in the first sentence after “section
9 2358 of this title”; and

10 (E) in subsection (f)—

11 (i) in the first sentence, by striking
12 out “under this section” and inserting in
13 lieu thereof “under section 2358 of this
14 title or subsection (a)”; and

15 (ii) in paragraph (4), by striking out
16 “subsection (a)” and inserting in lieu
17 thereof “subsection (b)”; and

18 (iii) in paragraph (5), by striking out
19 “subsection (d)” and inserting in lieu
20 thereof “subsection (e)”.

1 **SEC. 1302. ELIMINATION OF INFLEXIBLE TERMINOLOGY**
2 **REGARDING COORDINATION AND COMMU-**
3 **NICATION OF DEFENSE RESEARCH ACTIVI-**
4 **TIES.**

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

7 (1) in subsection (b)(5), by striking out “mile-
8 stone 0, milestone I, and milestone II decisions” and
9 inserting in lieu thereof “acquisition program deci-
10 sions”; and

11 (2) in subsection (c), by striking out para-
12 graphs (2), (3), and (4) and inserting in lieu thereof
13 the following:

14 “(2) The term ‘acquisition program decisions’
15 has the meaning given such term in regulations pre-
16 scribed by the Secretary of Defense for the purposes
17 of this section.”.

18 **Subtitle D—Procurement Protests**

19 **PART I—PROTESTS TO THE COMPTROLLER**

20 **GENERAL**

21 **SEC. 1401. PROTEST DEFINED.**

22 Paragraph (1) of section 3551 of title 31, United
23 States Code, is amended to read as follows:

24 “(1) ‘protest’ means a written objection by an
25 interested party—

1 “(i) to a solicitation or other request by a
2 Federal agency for offers for a contract for the
3 procurement of property or services;

4 “(ii) to the cancellation of such a solicita-
5 tion or other request;

6 “(iii) to an award or proposed award of
7 such a contract; or

8 “(iv) to a termination or cancellation of an
9 award of such a contract, if the written objec-
10 tion contains an allegation that the termination
11 or cancellation is based in whole or in part on
12 improprieties concerning the award of the con-
13 tract;”.

14 **SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CON-**
15 **TRACTS PENDING DECISION.**

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

18 (1) in subsection (b)—

19 (A) in paragraph (1), by striking out “one
20 working day of” and inserting in lieu thereof
21 “one day after”; and

22 (B) in paragraph (2)—

23 (i) in subparagraph (A), by striking
24 out “25 working days from” and inserting
25 in lieu thereof “35 days after”; and

1 (ii) in subparagraph (C), by striking
2 out “10 working days from” and inserting
3 in lieu thereof “25 days after”; and

4 (2) in subsection (c)(3), by striking out “there-
5 after” and inserting in lieu thereof “after the mak-
6 ing of such finding”.

7 (b) SUSPENSION OF PERFORMANCE.—Subsection (d)
8 of such section is amended to read as follows:

9 “(d)(1) A contractor awarded a Federal agency con-
10 tract may, during the period described in paragraph (4),
11 begin performance of the contract and engage in any relat-
12 ed activities that result in obligations being incurred by
13 the United States under the contract unless the contract-
14 ing officer responsible for the award of the contract with-
15 holds authorization to proceed with performance of the
16 contract.

17 “(2) The contracting officer may withhold an author-
18 ization to proceed with performance of the contract during
19 the period described in paragraph (4) if the contracting
20 officer determines in writing that—

21 “(A) a protest is likely to be filed; and

22 “(B) the immediate performance of the contract
23 is not in the best interests of the United States.

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

4 “(i) the contracting officer may not authorize
5 performance of the contract to begin while the pro-
6 test is pending; or

7 “(ii) if contract performance authorization to
8 proceed was not withheld in accordance with para-
9 graph (2) before receipt of the notice, the contract-
10 ing officer shall immediately direct the contractor to
11 cease performance under the contract and to sus-
12 pend any related activities that may result in addi-
13 tional obligations being incurred by the United
14 States under that contract.

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

18 “(C) The head of the procuring activity may author-
19 ize the performance of the contract (notwithstanding a
20 protest of which the Federal agency has notice under this
21 section)—

22 “(i) upon a written finding that—

23 “(I) performance of the contract is in the
24 best interests of the United States; or

1 “(II) urgent and compelling circumstances
2 that significantly affect interests of the United
3 States will not permit waiting for the decision
4 of the Comptroller General concerning the pro-
5 test; and

6 “(ii) after the Comptroller General is notified of
7 that finding.

8 “(4) The period referred to in paragraphs (2) and
9 (3)(A), with respect to a contract, is the period beginning
10 on the date of the contract award and ending on the later
11 of—

12 “(A) the date that is 10 days after the date of
13 the contract award; or

14 “(B) the date that is 5 days after—

15 “(i) the debriefing date offered to an un-
16 successful offeror for any debriefing that is re-
17 quested and, when requested, is required; or

18 “(ii) in the case of a contract for which no
19 debriefing is required, the date on which the
20 unsuccessful offeror receives the notification of
21 contract award.”.

22 **SEC. 1403. DECISIONS ON PROTESTS.**

23 (a) PERIODS FOR CERTAIN ACTIONS.—Section
24 3554(a) of title 31, United States Code, is amended—

1 (1) in paragraph (1), by striking out “90 work-
2 ing days from” and inserting in lieu thereof “125
3 days after”;

4 (2) in paragraph (2), by striking out “45 cal-
5 endar days from” and inserting “65 days after”;

6 (3) by redesignating paragraph (3) as para-
7 graph (4); and

8 (4) by inserting after paragraph (2) the follow-
9 ing new paragraph (3):

10 “(3) An amendment to a protest that adds a new
11 ground of protest, if timely made, should be resolved, to
12 the maximum extent practicable, within the time limit es-
13 tablished under paragraph (1) of this subsection for final
14 decision of the initial protest. If an amended protest can-
15 not be resolved within such time limit, the Comptroller
16 General may resolve the amended protest through the ex-
17 press option under paragraph (2) of this subsection.”.

18 (b) GAO RECOMMENDATIONS ON PROTESTS.—

19 (1) IMPLEMENTATION OF RECOMMENDA-
20 TIONS.—Section 3554 of title 31, United States
21 Code, is amended—

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

24 “(3) If the Federal agency fails to implement fully
25 the recommendations of the Comptroller General under

1 this subsection with respect to a solicitation for a contract
2 or an award or proposed award of a contract within 60
3 days after receiving the recommendations, the head of the
4 procuring activity responsible for that contract shall re-
5 port such failure to the Comptroller General not later than
6 5 working days after the end of such 60-day period.”;

7 (B) by striking out subsection (c) and in-
8 serting in lieu thereof the following:

9 “(c)(1) If the Comptroller General determines that
10 a solicitation for a contract or a proposed award or the
11 award of a contract does not comply with a statute or reg-
12 ulation, the Comptroller General may recommend that the
13 Federal agency conducting the procurement pay to an ap-
14 propriate interested party the costs of—

15 “(A) filing and pursuing the protest, including
16 reasonable attorney’s fees and consultant and expert
17 witness fees; and

18 “(B) bid and proposal preparation.

19 “(2) No party may be paid, pursuant to a rec-
20 ommendation made under the authority of paragraph
21 (1)—

22 “(A) costs for consultant and expert witness
23 fees that exceed the rates provided under section
24 504(b)(1)(A) of title 5 for expert witnesses; or

1 “(B) costs for attorney’s fees that exceed the
2 rates provided for attorneys under section
3 504(b)(1)(A) of title 5.

4 “(3) If the Comptroller General recommends under
5 paragraph (1) that a Federal agency pay costs to an inter-
6 ested party, the Federal agency shall—

7 “(A) pay the costs promptly; or

8 “(B) if the Federal agency does not make such
9 payment, promptly report to the Comptroller Gen-
10 eral the reasons for the failure to follow the Comp-
11 troller General’s recommendation.

12 “(4) If the Comptroller General recommends under
13 paragraph (1) that a Federal agency pay costs to an inter-
14 ested party, the Federal agency and the interested party
15 shall attempt to reach an agreement on the amount of the
16 costs to be paid. If the Federal agency and the interested
17 party are unable to agree on the amount to be paid, the
18 Comptroller General may, upon the request of the inter-
19 ested party, recommend to the Federal agency the amount
20 of the costs that the Federal agency should pay.”; and

21 (C) by striking out subsection (e) and in-
22 serting in lieu thereof the following:

23 “(e)(1) The Comptroller General shall report prompt-
24 ly to the Committee on Governmental Affairs and the
25 Committee on Appropriations of the Senate and to the

1 Committee on Government Operations and the Committee
2 on Appropriations of the House of Representatives any
3 case in which a Federal agency fails to implement fully
4 a recommendation of the Comptroller General under sub-
5 section (b) or (c). The report shall include—

6 “(A) a comprehensive review of the pertinent
7 procurement, including the circumstances of the fail-
8 ure of the Federal agency to implement a rec-
9 ommendation of the Comptroller General; and

10 “(B) a recommendation regarding whether, in
11 order to correct an inequity or to preserve the integ-
12 rity of the procurement process, the Congress should
13 consider—

14 “(i) private relief legislation;

15 “(ii) legislative rescission or cancellation of
16 funds;

17 “(iii) further investigation by Congress; or

18 “(iv) other action.

19 “(2) Not later than January 31 of each year, the
20 Comptroller General shall transmit to the Congress a re-
21 port containing a summary of each instance in which a
22 Federal agency did not fully implement a recommendation
23 of the Comptroller General under subsection (b) or (c)
24 during the preceding year. The report shall also describe
25 each instance in which a final decision in a protest was

1 not rendered within 125 days after the date the protest
2 is submitted to the Comptroller General.”.

3 (2) REQUIREMENT FOR PAYMENT IN ACCORD-
4 ANCE WITH PRIOR GAO DETERMINATIONS.—Costs to
5 which the Comptroller General declared an inter-
6 ested party to be entitled under section 3554 of title
7 31, United States Code, as in effect immediately be-
8 fore the enactment of this Act, shall, if not paid or
9 otherwise satisfied by the Federal agency concerned
10 before the date of the enactment of this Act, be paid
11 promptly.

12 **SEC. 1404. REGULATIONS.**

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

15 (1) by redesignating subsection (b) as sub-
16 section (d); and

17 (2) by inserting after subsection (a) the follow-
18 ing new subsection (b):

19 “(b) The procedures shall provide that, in the com-
20 putation of any period described in this subchapter—

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

24 “(2) the last day after such act, event, or de-
25 fault be included, unless—

1 “(A) such last day is a Saturday, a Sun-
2 day, or a legal holiday; or

3 “(B) in the case of a filing of a paper at
4 the General Accounting Office or a Federal
5 agency, such last day is a day on which weather
6 or other conditions cause the closing of the
7 General Accounting Office or Federal agency,
8 in which event the next day that is not a Satur-
9 day, Sunday, or legal holiday shall be in-
10 cluded.”.

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

15 “(c) The Comptroller General may prescribe proce-
16 dures for the electronic filing and dissemination of docu-
17 ments and information required under this subchapter. In
18 prescribing such procedures, the Comptroller General shall
19 consider the ability of all parties to achieve electronic ac-
20 cess to such documents and records.”.

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

1 **PART II—PROTESTS IN THE FEDERAL COURTS**

2 **SEC. 1421. NONEXCLUSIVITY OF REMEDIES.**

3 Section 3556 of title 31, United States Code, is
4 amended by striking out “a district court of the United
5 States or the United States Claims Court” in the first sen-
6 tence and inserting in lieu thereof “the United States
7 Court of Federal Claims”.

8 **SEC. 1422. JURISDICTION OF THE UNITED STATES COURT**
9 **OF FEDERAL CLAIMS.**

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

13 (1) by redesignating subsection (b) as sub-
14 section (e);

15 (2) in subsection (a)—

16 (A) by striking out “(a)(1)” and inserting
17 in lieu thereof “(a) CLAIMS AGAINST THE
18 UNITED STATES.—”;

19 (B) in paragraph (2), by striking out “(2)
20 To” and inserting in lieu thereof “(b) REMEDY
21 AND RELIEF.—To”; and

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

23 (3) by inserting after subsection (b), as des-
24 igned by paragraph (2)(B), the following new sub-
25 section (c):

1 “(c) BID PROTESTS.—(1) The United States Court
2 of Federal Claims has jurisdiction to render judgment on
3 an action by an interested party objecting to a solicitation
4 by a Federal agency for bids or proposals for a proposed
5 contract or to a proposed award or the award of a con-
6 tract. The court has jurisdiction to entertain such an ac-
7 tion without regard to whether suit is instituted before or
8 after the contract is awarded.

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

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

16 “(4) The district courts of the United States do not
17 have jurisdiction of any action referred to in paragraph
18 (1).”.

19 (b) CLERICAL AMENDMENTS.—

20 (1) SECTION HEADING.—The heading of such
21 section is amended by inserting “**BID PROTESTS;**”
22 after “**GENERALLY;**”.

23 (2) TABLE OF SECTIONS.—The table of sections
24 at the beginning of chapter 91 of title 28, United
25 States Code, is amended by striking out the item re-

1 lating to section 1491 and inserting in lieu thereof
2 the following:

“1491. Claims against United States generally; bid protests; actions involving
Tennessee Valley Authority.”.

3 **PART III—PROTESTS IN PROCUREMENTS OF**
4 **AUTOMATIC DATA PROCESSING**

5 **SEC. 1431. REVOCATION OF DELEGATIONS OF PROCURE-**
6 **MENT AUTHORITY.**

7 Section 111(b)(3) of the Federal Property and Ad-
8 ministrative Services Act of 1949 (40 U.S.C. 759(b)(3))
9 is amended by inserting after the third sentence the fol-
10 lowing: “The Administrator may revoke a delegation of
11 authority with respect to a particular contract before or
12 after award of the contract, except that the Administrator
13 may revoke a delegation after the contract is awarded only
14 when there is a finding of a violation of law or regulation
15 in connection with the contract award.”.

16 **SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMIN-**
17 **ISTRATION BOARD OF CONTRACT APPEALS.**

18 The first sentence of section 111(f)(1) of the Federal
19 Property and Administrative Services Act of 1949 (40
20 U.S.C. 759(f)(1)) is amended to read as follows: “Upon
21 request of an interested party in connection with any pro-
22 curement that is subject to this section (including any
23 such procurement that is subject to delegation of procure-
24 ment authority), the board of contract appeals of the Gen-

1 eral Services Administration (hereafter in this subsection
2 referred to as the ‘board’) shall review, as provided in this
3 subsection, any decision by a contracting officer that is
4 alleged to violate a statute, a regulation, or the conditions
5 of a delegation of procurement authority.’’.

6 **SEC. 1433. PERIODS FOR CERTAIN ACTIONS.**

7 (a) SUSPENSION OF PROCUREMENT AUTHORITY.—
8 Section 111(f) of the Federal Property and Administrative
9 Services Act of 1949 (40 U.S.C. 759(f)) is amended—

10 (1) in paragraph (2) by adding at the end the
11 following new subparagraph:

12 “(C) If, in the case of a preaward protest, the board
13 suspends the procurement authority of the Administrator
14 or the Administrator’s delegation of procurement author-
15 ity, the Administrator or the delegate, as the case may
16 be, may continue with the procurement action up to, but
17 not including, the awarding of the contract if the Adminis-
18 trator or the delegate, as the case may be, determines that
19 it is in the best interests of the United States to do so.’’;
20 and

21 (2) in paragraph (3) by striking out subpara-
22 graph (A) and inserting in lieu thereof the following:

23 “(A)(i) If, with respect to an award of a contract,
24 the board receives notice of a protest under this subsection
25 within the period described in clause (ii), the board shall,

1 at the request of an interested party, hold a hearing to
2 determine whether the board should suspend the procure-
3 ment authority of the Administrator or the Administra-
4 tor's delegation of procurement authority for the protested
5 procurement on an interim basis until the board can de-
6 cide the protest.

7 “(ii) The period referred to in clause (i) is the period
8 beginning on the date on which the contract is awarded
9 and ending on the date that is 10 days after the date of
10 the contract award or, if later, the date that is 5 days
11 after—

12 “(I) the debriefing date offered to an unsuc-
13 cessful offeror for any debriefing that is requested
14 and, when requested, is required; or

15 “(II) in the case of a contract for which no de-
16 briefing is required, the date on which the unsuc-
17 cessful offeror receives the notification of contract
18 award.

19 “(iii) The board shall hold the requested hearing
20 within 5 days after the date of the filing of the protest
21 or, in the case of a request for debriefing under the provi-
22 sions of section 2305(b)(5) of title 10, United States Code,
23 or section 303B(e) of this Act, within 5 days after the
24 later of the date of the filing of the protest or the date
25 of the debriefing.”.

1 (b) FINAL DECISION.—Paragraph (4)(B) of such sec-
2 tion 111(f) is amended—

3 (1) by striking out “45 working days” and in-
4 serting in lieu thereof “65 days”; and

5 (2) by adding at the end the following: “An
6 amendment which adds a new ground of protest
7 should be resolved, to the maximum extent prac-
8 ticable, within the time limits established for resolu-
9 tion of the initial protest.”.

10 **SEC. 1434. DISMISSALS OF PROTESTS.**

11 Section 111(f)(4) of the Federal Property and Ad-
12 ministrative Services Act of 1949 (40 U.S.C. 759(f)(4))
13 is amended by striking out subparagraph (C) and insert-
14 ing in lieu thereof the following:

15 “(C) The board may dismiss a protest that the board
16 determines—

17 “(i) is frivolous;

18 “(ii) has been brought in bad faith; or

19 “(iii) does not state on its face a valid basis for
20 protest.”.

21 **SEC. 1435. AWARD OF COSTS.**

22 Section 111(f)(5) is amended by striking out sub-
23 paragraph (C) and inserting in lieu thereof the following:

24 “(C) Whenever the board makes such a determina-
25 tion, it may, in accordance with section 1304 of title 31,

1 United States Code, further declare an appropriate pre-
2 vailing party to be entitled to the cost of filing and pursu-
3 ing the protest (including reasonable attorney’s fees and
4 consultant and expert witness fees), and bid and proposal
5 preparation. However, no party may be declared entitled
6 to costs for consultant and expert witness fees that exceed
7 the rates provided under section 504(b)(1)(A) of title 5,
8 United States Code, for expert witnesses or to costs for
9 attorney’s fees that exceed the rates provided for attorneys
10 under section 504(b)(1)(A) of title 5, United States
11 Code.”.

12 **SEC. 1436. DISMISSAL AGREEMENTS.**

13 Section 111(f)(5) of the Federal Property and Ad-
14 ministrative Services Act of 1949 (40 U.S.C. 759(f)(5))
15 is amended by adding at the end the following new sub-
16 paragraphs:

17 “(D) Any agreement that provides for the dismissal
18 of a protest and involves a direct or indirect expenditure
19 of appropriated funds shall be submitted to the board and
20 shall be made a part of the public record (subject to any
21 protective order considered appropriate by the board) be-
22 fore dismissal of the protest. If a Federal agency is a party
23 to a settlement agreement, the submission of the agree-
24 ment submitted to the board shall include a memorandum,
25 signed by the contracting officer concerned, that describes

1 in detail the procurement, the grounds for protest, the
2 Federal Government's position regarding the grounds for
3 protest, the terms of the settlement, and the agency's posi-
4 tion regarding the propriety of the award or proposed
5 award of the contract at issue in the protest.

6 “(E) Payment of amounts due from an agency under
7 subparagraph (C) or under the terms of a settlement
8 agreement under subparagraph (D) shall be made from
9 the appropriation made by section 1304 of title 31, United
10 States Code, for the payment of judgments. The Federal
11 agency concerned shall reimburse that appropriation ac-
12 count out of funds available for the procurement.”.

13 **SEC. 1437. JURISDICTION OF DISTRICT COURTS.**

14 Section 111(f)(6)(C) of the Federal Property and Ad-
15 ministrative Services Act of 1949 (40 U.S.C.
16 759(f)(6)(C)) is amended by striking out “a district court
17 of the United States or”.

18 **SEC. 1438. MATTERS TO BE COVERED IN REGULATIONS.**

19 Section 111(f) of the Federal Property and Adminis-
20 trative Services Act of 1949 (40 U.S.C. 759(f)) is amend-
21 ed by striking out paragraph (8) and inserting in lieu
22 thereof the following:

23 “(7)(A) The board shall adopt and issue such rules
24 and procedures as may be necessary to the expeditious dis-

1 position of protests filed under the authority of this sub-
2 section.

3 “(B) The procedures shall provide that, in the com-
4 putation of any period described in this subsection—

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

8 “(ii) the last day after such act, event, or de-
9 fault be included, unless—

10 “(I) such last day is a Saturday, a Sunday,
11 or a legal holiday; or

12 “(II) in the case of a filing of a paper at
13 the board, such last day is a day on which
14 weather or other conditions cause the closing of
15 the board or Federal agency, in which event the
16 next day that is not a Saturday, Sunday, or
17 legal holiday shall be included.

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

23 “(D) The procedures shall provide that if the board
24 expressly finds that a protest or a portion of a protest
25 is frivolous or has not been brought or pursued in good

1 faith, or that any person has willfully abused the board's
2 process during the course of a protest, the board may im-
3 pose appropriate procedural sanctions, including dismissal
4 of the protest.”.

5 **SEC. 1439. DEFINITIONS.**

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

9 “(A) the term ‘protest’ means a written objec-
10 tion by an interested party—

11 “(i) to a solicitation or other request by a
12 Federal agency for offers for a contract for the
13 procurement of property or services;

14 “(ii) to the cancellation of such a solicita-
15 tion or other request;

16 “(iii) to an award or proposed award of
17 such a contract; or

18 “(iv) to a termination or cancellation of an
19 award of such a contract, if the written objec-
20 tion contains an allegation that the termination
21 or cancellation is based in whole or in part on
22 improprieties concerning the award of the con-
23 tract;”.

24 (b) PREVAILING PARTY.—Section 111(f)(9) of such
25 Act is amended—

1 (1) by striking out “and” at the end of sub-
2 paragraph (A);

3 (2) by striking out the period at the end of sub-
4 paragraph (B) and inserting in lieu thereof “; and”;
5 and

6 (3) by adding at the end the following new sub-
7 paragraph:

8 “(C) the term ‘prevailing party’, with respect to
9 a determination of the board under paragraph
10 (5)(B) that a challenged action of a Federal agency
11 violates a statute or regulation or the conditions of
12 a delegation of procurement authority issued pursu-
13 ant to this section, means a party that demonstrated
14 such violation.”.

15 **Subtitle E—Definitions and Other** 16 **Matters**

17 **PART I—ARMED SERVICES ACQUISITIONS**

18 **SEC. 1501. DEFINITIONS.**

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

21 (1) by striking out paragraphs (3), (4), (5), and
22 (7);

23 (2) by redesignating paragraph (6) as para-
24 graph (5); and

1 (3) by inserting after paragraph (2) the follow-
2 ing:

3 “(3) The terms ‘commercial item’, ‘full and
4 open competition’, ‘major system’,
5 ‘nondevelopmental item’, ‘procurement’, ‘procure-
6 ment system’, ‘responsible source’, ‘standards’, and
7 ‘technical data’, have the meanings given such terms
8 in section 4 of the Office of Federal Procurement
9 Policy Act (41 U.S.C. 403).

10 “(4) The term ‘simplified acquisition threshold’
11 has the meaning given that term in section 4 of the
12 Office of Federal Procurement Policy Act (41 U.S.C.
13 403), except that, in the case of any contract to be
14 awarded and performed, or purchase to be made,
15 outside the United States in support of a contin-
16 gency operation, the term means an amount equal to
17 two times the amount specified for that term in sec-
18 tion 4 of such Act.”.

19 **SEC. 1502. DELEGATION OF PROCUREMENT FUNCTIONS.**

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

23 **“§ 2311. Delegation**

24 “(a) IN GENERAL.—Except to the extent expressly
25 prohibited by another provision of law, the head of an

1 agency may delegate, subject to his direction, to any other
2 officer or official of that agency, any power under this
3 chapter.

4 “(b) PROCUREMENTS FOR OR WITH OTHER AGEN-
5 CIES.—Subject to subsection (a), to facilitate the procure-
6 ment of property and services covered by this chapter by
7 each agency named in section 2303 of this title for any
8 other agency, and to facilitate joint procurement by those
9 agencies—

10 “(1) the head of an agency may, within his
11 agency, delegate functions and assign responsibilities
12 relating to procurement;

13 “(2) the heads of two or more agencies may by
14 agreement delegate procurement functions and as-
15 sign procurement responsibilities from one agency to
16 another of those agencies or to an officer or civilian
17 employee of another of those agencies; and

18 “(3) the heads of two or more agencies may
19 create joint or combined offices to exercise procure-
20 ment functions and responsibilities.

21 “(c) APPROVAL OF TERMINATIONS AND REDUCTIONS
22 OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary
23 of Defense shall prescribe regulations that prohibit each
24 military department participating in a joint acquisition
25 program approved by the Under Secretary of Defense for

1 Acquisition and Technology from terminating or substan-
2 tially reducing its participation in such program without
3 the approval of the Under Secretary.

4 “(2) The regulations shall include the following provi-
5 sions:

6 “(A) A requirement that, before any such ter-
7 mination or substantial reduction in participation is
8 approved, the proposed termination or reduction be
9 reviewed by the Joint Requirements Oversight Coun-
10 cil of the Department of Defense.

11 “(B) A provision that authorizes the Under
12 Secretary of Defense for Acquisition and Technology
13 to require a military department approved for termi-
14 nation or substantial reduction in participation in a
15 joint acquisition program to continue to provide
16 some or all of the funding necessary for the acquisi-
17 tion program to be continued in an efficient man-
18 ner.”.

19 (b) CONFORMING REPEAL.—(1) Section 2308 of title
20 10, United States Code, is repealed.

21 (2) The table of sections at the beginning of chapter
22 137 of such title is amended by striking out the item relat-
23 ed to section 2308.

1 **SEC. 1503. DETERMINATIONS AND DECISIONS.**

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

4 **“§ 2310. Determinations and decisions**

5 “(a) INDIVIDUAL OR CLASS DETERMINATIONS AND
6 DECISIONS AUTHORIZED.—Determinations and decisions
7 required to be made under this chapter by the head of
8 an agency may be made for an individual purchase or con-
9 tract or for a class of purchases or contracts. Such deter-
10 minations and decisions are final.

11 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-
12 termination or decision under section 2306(e)(1), 2307(e),
13 or 2313(d)(2) of this title shall be based on a written find-
14 ing by the person making the determination or decision.
15 The finding shall set out facts and circumstances that sup-
16 port the determination or decision.

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

21 **SEC. 1504. UNDEFINITE CONTRACTUAL ACTIONS: RE-**
22 **STRICTIONS.**

23 (a) CLARIFICATION OF LIMITATION.—Subsection (b)
24 of section 2326 of title 10, United States Code, is amend-
25 ed—

1 (1) in the subsection caption, by striking out
2 “AND EXPENDITURE”;

3 (2) in paragraph (1)(B), by striking out “or ex-
4 pended”;

5 (3) in paragraph (2), by striking out “expend”
6 and inserting in lieu thereof “obligate”; and

7 (4) in paragraph (3)—

8 (A) by striking out “expended” and insert-
9 ing in lieu thereof “obligated”; and

10 (B) by striking out “expend” and inserting
11 in lieu thereof “obligate”.

12 (b) WAIVER AUTHORITY.—Such subsection is amend-
13 ed—

14 (1) by redesignating paragraph (4) as para-
15 graph (5); and

16 (2) by inserting after paragraph (3) the follow-
17 ing new paragraph (4):

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

22 (c) INAPPLICABILITY OF RESTRICTIONS TO CON-
23 TRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESH-
24 OLD.—Section 2326(g)(1)(B) of title 10, United States
25 Code, is amended by striking out “small purchase thresh-

1 old” and inserting in lieu thereof “simplified acquisition
2 threshold”.

3 **SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUC-**
4 **TION SPECIAL TEST EQUIPMENT: CONTRACT**
5 **TERMS AND CONDITIONS.**

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

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

11 **SEC. 1506. REGULATIONS FOR BIDS.**

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

16 “(a) The Secretary of Defense or the Secretary of
17 a military department may—

18 “(1) prescribe regulations for the preparation,
19 submission, and opening of bids for contracts; and”.

20 **PART II—CIVILIAN AGENCY ACQUISITIONS**

21 **SEC. 1551. DEFINITIONS.**

22 Section 309(c) of the Federal Property and Adminis-
23 trative Services Act of 1949 (41 U.S.C. 259(c)) is amend-
24 ed by striking out “and ‘supplies’” and inserting in lieu

1 thereof “‘supplies’, ‘commercial item’, ‘nondevelopmental
2 item’, and ‘simplified acquisition threshold’”.

3 **SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.**

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

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

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

11 “DELEGATION

12 “SEC. 309. (a) IN GENERAL.—Except to the extent
13 expressly prohibited by another provision of law, an agen-
14 cy head may delegate, subject to his direction, to any other
15 officer or official of that agency, any power under this
16 title.

17 “(b) PROCUREMENTS FOR OR WITH OTHER AGEN-
18 CIES.—Subject to subsection (a), to facilitate the procure-
19 ment of property and services covered by this title by each
20 executive agency for any other executive agency, and to
21 facilitate joint procurement by those executive agencies—

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

25 “(2) the heads of two or more executive agen-
26 cies may by agreement delegate procurement func-

1 tions and assign procurement responsibilities from
 2 one executive agency to another of those executive
 3 agencies or to an officer or civilian employee of an-
 4 other of those executive agencies; and

5 “(3) the heads of two or more executive agen-
 6 cies may create joint or combined offices to exercise
 7 procurement functions and responsibilities.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
 9 in the first section of such Act is amended by striking out
 10 the items relating to sections 309 and 310 and inserting
 11 in lieu thereof the following:

“Sec. 309. Delegation.
 “Sec. 312. Definitions.
 “Sec. 313. Statutes not applicable.”.

12 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

13 (a) IN GENERAL.—Title III of the Federal Property
 14 and Administrative Services Act of 1949 (41 U.S.C. 251
 15 et seq.), as amended by section 1552, is further amended
 16 by inserting after section 309 the following new section
 17 310:

18 “DETERMINATIONS AND DECISIONS
 19 “SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINA-
 20 TIONS AND DECISIONS AUTHORIZED.—Determinations
 21 and decisions required to be made under this title by an
 22 agency head may be made for an individual purchase or
 23 contract or for a class of purchases or contracts. Such de-
 24 terminations and decisions are final.

1 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-
2 termination under section 305(e) shall be based on a writ-
3 ten finding by the person making the determination or de-
4 cision. The finding shall set out facts and circumstances
5 that support the determination or decision.

6 “(2) Each finding referred to in paragraph (1) shall
7 be final. The agency head making such finding shall main-
8 tain a copy of the finding for not less than 6 years after
9 the date of the determination or decision.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
11 in the first section of such Act, as amended by section
12 1552, is further amended by inserting after the item relat-
13 ing to section 309 the following:

“Sec. 310. Determinations and decisions.”.

14 **SEC. 1554. COOPERATIVE PURCHASING.**

15 Subsection (b) of section 201 of the Federal Property
16 and Administrative Services Act of 1949 (40 U.S.C. 481),
17 is amended to read as follows:

18 “(b)(1) The Administrator shall, as far as prac-
19 ticable, provide any of the services specified in subsection
20 (a) of this section to any other Federal agency, mixed-
21 ownership Government corporation (as defined in section
22 9101 of title 31, United States Code), or the District of
23 Columbia, upon its request.

1 “(2)(A) The Administrator may provide for the use
2 of Federal supply schedules or other contracts by any of
3 the following entities upon request:

4 “(i) A State, any department or agency of a
5 State, and any political subdivision of a State, in-
6 cluding a local government.

7 “(ii) The District of Columbia.

8 “(iii) The Commonwealth of Puerto Rico.

9 “(iv) The government of an Indian tribe (as de-
10 fined in section 4(e) of the Indian Self-Determina-
11 tion and Education Assistance Act (25 U.S.C.
12 450b(e))).

13 “(B) Subparagraph (A) may not be construed to au-
14 thorize an entity referred to in that subparagraph to order
15 existing stock or inventory from federally owned and oper-
16 ated, or federally owned and contractor operated, supply
17 depots, warehouses, or similar facilities.

18 “(3)(A) Upon the request of a qualified nonprofit
19 agency for the blind or other severely handicapped that
20 is to provide a commodity or service to the Federal Gov-
21 ernment under the Javits-Wagner-O’Day Act, the Admin-
22 istrator may provide any of the services specified in sub-
23 section (a) to such agency to the extent practicable.

24 “(B) A nonprofit agency receiving services under the
25 authority of subparagraph (A) shall use the services di-

1 rectly in making or providing an approved commodity or
2 approved service to the Federal Government.

3 “(C) In this paragraph:

4 “(i) The term ‘qualified nonprofit agency for
5 the blind or other severely handicapped’ means—

6 “(I) a qualified nonprofit agency for the
7 blind, as defined in section 5(3) of the Javits-
8 Wagner-O’Day Act (41 U.S.C. 48b(3)); and

9 “(II) a qualified nonprofit agency for other
10 severely handicapped, as defined in section 5(4)
11 of such Act (41 U.S.C. 48b(4)).

12 “(ii) The terms ‘approved commodity’ and ‘ap-
13 proved service’ mean a commodity and a service, re-
14 spectively, that has been determined by the Commit-
15 tee for Purchase from the Blind and Other Severely
16 Handicapped under section 2 of the Javits-Wagner-
17 O’Day Act (41 U.S.C. 47) to be suitable for pro-
18 curement by the Federal Government.

19 “(iii) The term ‘Javits-Wagner-O’Day Act’
20 means the Act entitled ‘An Act to create a Commit-
21 tee on Purchases of Blind-made Products, and for
22 other purposes’, approved June 25, 1938 (41 U.S.C.
23 46–48c), commonly referred to as the Wagner-
24 O’Day Act, that was revised and reenacted in the

1 Act of June 23, 1971 (85 Stat. 77), commonly re-
2 ferred to as the Javits-Wagner-O'Day Act.”.

3 ***TITLE II—CONTRACT***

4 ***ADMINISTRATION***

5 **Subtitle A—Contract Payment**

6 **PART I—ARMED SERVICES ACQUISITIONS**

7 **SEC. 2001. CONTRACT FINANCING.**

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

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

13 **“§ 2307. Contract financing”;**

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

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

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

23 (5) by striking out “(d)(1) The Secretary of
24 Defense” and inserting in lieu thereof “(f) CONDI-

1 TIONS FOR PROGRESS PAYMENTS.—(1) The Sec-
2 retary of Defense”; and

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

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

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

22 (c) PERFORMANCE-BASED PAYMENTS.—Such sec-
23 tion, as amended by subsection (a), is further amended
24 by inserting after subsection (b) the following new sub-
25 section (c):

1 “(c) PERFORMANCE-BASED PAYMENTS.—Whenever
2 practicable, payments under subsection (b) shall be made
3 on any of the following bases:

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

8 “(2) Accomplishment of events defined in the
9 program management plan.

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

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

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

21 (f) CONDITIONS FOR PROGRESS PAYMENTS.—Such
22 section, as amended by subsection (a)(5), is further
23 amended in subsection (f)—

24 (1) in the first sentence of paragraph (1), by
25 striking out “work, which” and all that follows

1 through “accomplished” and inserting in lieu thereof
2 “work accomplished that meets standards estab-
3 lished under the contract”; and

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

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

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

12 “(g) CERTAIN NAVY CONTRACTS.—(1) The Sec-
13 retary of the Navy shall provide that the rate for progress
14 payments on any contract awarded by the Secretary for
15 repair, maintenance, or overhaul of a naval vessel shall
16 be not less than—

17 “(A) 95 percent, in the case of firms considered
18 to be small businesses; and

19 “(B) 90 percent, in the case of all other firms.

20 “(2) The Secretary of the Navy may advance to pri-
21 vate salvage companies such funds as the Secretary con-
22 siders necessary to provide for the immediate financing
23 of salvage operations. Advances under this paragraph shall
24 be made on terms that the Secretary considers adequate
25 for the protection of the United States.

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

8 (h) 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 (i) REPEAL OF SUPERSEDED PROVISIONS.—

19 (1) PROGRESS PAYMENTS UNDER CERTAIN
20 NAVY CONTRACTS.—

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

23 (B) CLERICAL AMENDMENT.—The table of
24 sections at the beginning of chapter 633 of such

1 title is amended by striking out the item relat-
2 ing to section 7312.

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

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

7 (B) CLERICAL AMENDMENT.—The table of
8 sections at the beginning of chapter 637 of such
9 title is amended by striking out the item relat-
10 ing to section 7364.

11 (3) PARTIAL PAYMENTS UNDER NAVY CON-
12 TRACTS.—

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

15 (B) CLERICAL AMENDMENT.—The table of
16 sections at the beginning of chapter 645 of such
17 title is amended by striking out the item relat-
18 ing to section 7521.

19 **SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.**

20 (a) REPEAL.—Section 2355 of title 10, United States
21 Code, is repealed.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of chapter 139 of such title is amended
24 by striking out the item relating to section 2355.

1 **PART II—CIVILIAN AGENCY ACQUISITIONS**

2 **SEC. 2051. CONTRACT FINANCING.**

3 (a) REORGANIZATION OF PRINCIPAL AUTHORITY
4 PROVISION.—Section 305 of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C. 255) is
6 amended—

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

9 “CONTRACT FINANCING”;

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

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

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

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

22 “(a) POLICY.—Payments authorized under this sec-
23 tion and made for financing purposes should be made peri-
24 odically or, when appropriate, on an advance basis and
25 should be so made in a timely manner to facilitate contract
26 performance while protecting the security interests of the

1 Government. Government financing shall be provided only
2 to the extent necessary to ensure prompt and efficient per-
3 formance and only after the availability of private financ-
4 ing is considered. A contractor's use of funds received as
5 contract financing and the contractor's financial condition
6 shall be monitored. If the contractor is a small business
7 concern, special attention shall be given to meeting the
8 contractor's financial need.”.

9 (c) PERFORMANCE-BASED PAYMENTS.—Such sec-
10 tion, as amended by subsection (a), is further amended
11 by inserting after subsection (b) the following new sub-
12 section (c):

13 “(c) PERFORMANCE-BASED PAYMENTS.—Whenever
14 practicable, payments under subsection (b) shall be made
15 on any of the following bases:

16 “(1) Performance measured by objective, quan-
17 tifiable methods such as receipt of items by the Fed-
18 eral Government, work measurement, or statistical
19 process controls.

20 “(2) Accomplishment of events defined in the
21 program management plan.

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

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

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

8 (f) REVISION OF CIVILIAN AGENCY PROVISION TO
9 ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-
10 MENTS.—

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

14 “(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1)
15 The agency head shall ensure that any payment for work
16 in progress (including materials, labor, and other items)
17 under a contract of an executive agency that provides for
18 such payments is commensurate with the work accom-
19 plished that meets standards established under the con-
20 tract. The contractor shall provide such information and
21 evidence as the agency head determines necessary to per-
22 mit the agency head to carry out the preceding sentence.

23 “(2) The agency head shall ensure that progress pay-
24 ments referred to in paragraph (1) are not made for more
25 than 80 percent of the work accomplished under the con-

1 tract so long as the agency head has not made the contrac-
2 tual terms, specifications, and price definite.

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

6 “(g) ACTION IN CASE OF FRAUD.—(1) In any case
7 in which the remedy coordination official of an executive
8 agency finds that there is substantial evidence that the
9 request of a contractor for advance, partial, or progress
10 payment under a contract awarded by that executive agen-
11 cy is based on fraud, the remedy coordination official shall
12 recommend that the agency head reduce or suspend fur-
13 ther payments to such contractor.

14 “(2) An agency head receiving a recommendation
15 under paragraph (1) in the case of a contractor’s request
16 for payment under a contract shall determine whether
17 there is substantial evidence that the request is based on
18 fraud. Upon making such a determination, the agency
19 head may reduce or suspend further payments to the con-
20 tractor under such contract.

21 “(3) The extent of any reduction or suspension of
22 payments by an agency head under paragraph (2) on the
23 basis of fraud shall be reasonably commensurate with the
24 anticipated loss to the United States resulting from the
25 fraud.

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

7 “(5) Each agency head shall prescribe procedures to
8 ensure that, before the agency head decides to reduce or
9 suspend payments in the case of a contractor under para-
10 graph (2), the contractor is afforded notice of the pro-
11 posed reduction or suspension and an opportunity to sub-
12 mit matters to the head of the agency in response to such
13 proposed reduction or suspension.

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

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

20 “(B) transmit a recommendation to the agency
21 head whether the suspension or reduction should
22 continue.

23 “(7) Each agency head who receives recommenda-
24 tions made by a remedy coordination official of the execu-
25 tive agency to reduce or suspend payments under para-

1 graph (2) during a fiscal year shall prepare for such year
2 a report that contains the recommendations, the actions
3 taken on the recommendations and the reasons for such
4 actions, and an assessment of the effects of such actions
5 on the Federal Government. Any such report shall be
6 available to any Member of Congress upon request.

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

10 “(9) In this subsection, the term ‘remedy coordina-
11 tion official’, with respect to an executive agency, means
12 the person or entity in that executive agency who coordi-
13 nates within that executive agency the administration of
14 criminal, civil, administrative, and contractual remedies
15 resulting from investigations of fraud or corruption related
16 to procurement activities.’”.

17 (2) RELATIONSHIP TO PROMPT PAYMENT RE-
18 QUIREMENTS.—The amendments made by para-
19 graph (1) are not intended to impair or modify pro-
20 cedures required by the provisions of chapter 39 of
21 title 31, United States Code, and the regulations is-
22 sued pursuant to such provisions of law, that relate
23 to progress payment requests, as such procedures
24 are in effect on the date of the enactment of this
25 Act.

1 (g) CONFORMING AND CLERICAL AMENDMENTS.—

2 (1) REFERENCE.—Section 305 of the Federal
3 Property and Administrative Services Act of 1949,
4 as amended by subsection (a), is further amended in
5 subsections (d) and (e) by striking out “subsection
6 (a)” and inserting in lieu thereof “subsection (b)”.

7 (2) TABLE OF CONTENTS.—The table of con-
8 tents in the first section of such Act is amended by
9 striking out the item relating to section 305 and in-
10 sserting in lieu thereof the following:

“Sec. 305. Contract financing.”.

11 **Subtitle B—Cost Principles**

12 **PART I—ARMED SERVICES ACQUISITIONS**

13 **SEC. 2101. ALLOWABLE CONTRACT COSTS.**

14 (a) COMPTROLLER GENERAL EVALUATION.—Section
15 2324 is amended by striking out subsection (l).

16 (b) COVERED CONTRACT DEFINED.—Subsection (m)
17 of section 2324 of title 10, United States Code, is amend-
18 ed to read as follows:

19 “(l)(1) In this section, the term ‘covered contract’
20 means a contract for an amount in excess of \$500,000
21 that is entered into by the Department of Defense, except
22 that such term does not include a fixed-price contract
23 without cost incentives.

24 “(2) Effective on October 1 of each year that is divis-
25 ible by 5, the amount set forth in paragraph (1) shall be

1 adjusted to the amount that is equal to the fiscal year
2 1994 constant dollar value of the amount set forth. An
3 amount, as so adjusted, that is not evenly divisible by
4 \$50,000 shall be rounded to the nearest multiple of
5 \$50,000. In the case of an amount that is evenly divisible
6 by \$25,000 but is not evenly divisible by \$50,000, the
7 amount shall be rounded to the next higher multiple of
8 \$50,000.”.

9 **SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMER-**
10 **GENCY PERIODS.**

11 (a) REPEAL.—Section 2382 of title 10, United States
12 Code, is repealed.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 141 of such title is amended
15 by striking out the item relating to section 2382.

16 **PART II—CIVILIAN AGENCY ACQUISITIONS**

17 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

18 (a) REVISION OF CIVILIAN AGENCY PROVISION TO
19 ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—
20 Section 306 of the Federal Property and Administrative
21 Services Act of 1949 (41 U.S.C. 256) is amended to read
22 as follows:

23 “ALLOWABLE COSTS

24 “SEC. 306. (a) INDIRECT COST THAT VIOLATES A
25 FAR COST PRINCIPLE.—The head of an executive agency
26 shall require that a covered contract provide that if the

1 contractor submits to the executive agency a proposal for
2 settlement of indirect costs incurred by the contractor for
3 any period after such costs have been accrued and if that
4 proposal includes the submission of a cost which is unal-
5 lowable because the cost violates a cost principle in the
6 Federal Acquisition Regulation or an executive agency's
7 supplement to the Federal Acquisition Regulation, the cost
8 shall be disallowed.

9 “(b) PENALTY FOR VIOLATION OF COST PRIN-
10 CIPLE.—(1) If the agency head determines that a cost
11 submitted by a contractor in its proposal for settlement
12 is expressly unallowable under a cost principle referred to
13 in subsection (a) that defines the allowability of specific
14 selected costs, the agency head shall assess a penalty
15 against the contractor in an amount equal to—

16 “(A) the amount of the disallowed cost allo-
17 cated to covered contracts for which a proposal for
18 settlement of indirect costs has been submitted; plus

19 “(B) interest (to be computed based on regula-
20 tions issued by the agency head) to compensate the
21 United States for the use of any funds which a con-
22 tractor has been paid in excess of the amount to
23 which the contractor was entitled.

24 “(2) If the agency head determines that a proposal
25 for settlement of indirect costs submitted by a contractor

1 includes a cost determined to be unallowable in the case
2 of such contractor before the submission of such proposal,
3 the agency head shall assess a penalty against the contrac-
4 tor in an amount equal to two times the amount of the
5 disallowed cost allocated to covered contracts for which a
6 proposal for settlement of indirect costs has been submit-
7 ted.

8 “(c) WAIVER OF PENALTY.—In accordance with the
9 Federal Acquisition Regulation, the agency head may
10 waive a penalty under subsection (b) in the case of a con-
11 tractor’s proposal for settlement of indirect costs when—

12 “(1) the contractor withdraws the proposal be-
13 fore the formal initiation of an audit of the proposal
14 by the Federal Government and resubmits a revised
15 proposal;

16 “(2) the amount of unallowable costs subject to
17 the penalty is insignificant; or

18 “(3) the contractor demonstrates, to the con-
19 tracting officer’s satisfaction, that—

20 “(A) it has established appropriate policies
21 and personnel training and an internal control
22 and review system that provide assurances that
23 unallowable costs subject to penalties are pre-
24 cluded from being included in the contractor’s
25 proposal for settlement of indirect costs; and

1 “(B) the unallowable costs subject to the
2 penalty were inadvertently incorporated into the
3 proposal.

4 “(d) APPLICABILITY OF CONTRACT DISPUTES PRO-
5 CEDURE TO DISALLOWANCE OF COST AND ASSESSMENT
6 OF PENALTY.—An action of an agency head under sub-
7 section (a) or (b)—

8 “(1) shall be considered a final decision for the
9 purposes of section 6 of the Contract Disputes Act
10 of 1978 (41 U.S.C. 605); and

11 “(2) is appealable in the manner provided in
12 section 7 of such Act.

13 “(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The
14 following costs are not allowable under a covered contract:

15 “(A) Costs of entertainment, including amuse-
16 ment, diversion, and social activities, and any costs
17 directly associated with such costs (such as tickets
18 to shows or sports events, meals, lodging, rentals,
19 transportation, and gratuities).

20 “(B) Costs incurred to influence (directly or in-
21 directly) legislative action on any matter pending be-
22 fore Congress or a State legislature.

23 “(C) Costs incurred in defense of any civil or
24 criminal fraud proceeding or similar proceeding (in-
25 cluding filing of any false certification) brought by

1 the United States where the contractor is found lia-
2 ble or had pleaded nolo contendere to a charge of
3 fraud or similar proceeding (including filing of a
4 false certification).

5 “(D) Payments of fines and penalties resulting
6 from violations of, or failure to comply with, Fed-
7 eral, State, local, or foreign laws and regulations, ex-
8 cept when incurred as a result of compliance with
9 specific terms and conditions of the contract or spe-
10 cific written instructions from the contracting officer
11 authorizing in advance such payments in accordance
12 with the Federal Acquisition Regulation.

13 “(E) Costs of membership in any social, dining,
14 or country club or organization.

15 “(F) Costs of alcoholic beverages.

16 “(G) Contributions or donations, regardless of
17 the recipient.

18 “(H) Costs of advertising designed to promote
19 the contractor or its products.

20 “(I) Costs of promotional items and memora-
21 bilia, including models, gifts, and souvenirs.

22 “(J) Costs for travel by commercial aircraft
23 which exceed the amount of the standard commercial
24 fare.

1 “(K) Costs incurred in making any payment
2 (commonly known as a ‘golden parachute payment’)
3 which is—

4 “(i) in an amount in excess of the normal
5 severance pay paid by the contractor to an em-
6 ployee upon termination of employment; and

7 “(ii) is paid to the employee contingent
8 upon, and following, a change in management
9 control over, or ownership of, the contractor or
10 a substantial portion of the contractor’s assets.

11 “(L) Costs of commercial insurance that pro-
12 tects against the costs of the contractor for correc-
13 tion of the contractor’s own defects in materials or
14 workmanship.

15 “(M) Costs of severance pay paid by the con-
16 tractor to foreign nationals employed by the contrac-
17 tor under a service contract performed outside the
18 United States, to the extent that the amount of sev-
19 erance pay paid in any case exceeds the amount paid
20 in the industry involved under the customary or pre-
21 vailing practice for firms in that industry providing
22 similar services in the United States, as determined
23 in accordance with the Federal Acquisition Regula-
24 tion.

1 “(N) Costs of severance pay paid by the con-
2 tractor to a foreign national employed by the con-
3 tractor under a service contract performed in a for-
4 eign country if the termination of the employment of
5 the foreign national is the result of the closing of,
6 or the curtailment of activities at, a United States
7 facility in that country at the request of the govern-
8 ment of that country.

9 “(O) Costs incurred by a contractor in connec-
10 tion with any criminal, civil, or administrative pro-
11 ceeding commenced by the United States or a State,
12 to the extent provided in subsection (k).

13 “(2)(A) Subject to the availability of appropriations,
14 the head of an executive agency, in awarding a covered
15 contract, may waive in accordance with the Federal Acqui-
16 sition Regulation the application of the provisions of para-
17 graphs (1)(M) and (1)(N) to that contract if the agency
18 head determines that—

19 “(i) the application of such provisions to the
20 contract would adversely affect the continuation of a
21 program, project, or activity that provides significant
22 support services for employees of the executive agen-
23 cy posted outside the United States;

24 “(ii) the contractor has taken (or has estab-
25 lished plans to take) appropriate actions within the

1 contractor's control to minimize the amount and
2 number of incidents of the payment of severance pay
3 by the contractor to employees under the contract
4 who are foreign nationals; and

5 “(iii) the payment of severance pay is necessary
6 in order to comply with a law that is generally appli-
7 cable to a significant number of businesses in the
8 country in which the foreign national receiving the
9 payment performed services under the contract or is
10 necessary to comply with a collective bargaining
11 agreement.

12 “(B) The head of the executive agency concerned
13 shall include in the solicitation for a covered contract a
14 statement indicating—

15 “(i) that a waiver has been granted under sub-
16 paragraph (A) for the contract; or

17 “(ii) whether the agency head will consider
18 granting such a waiver, and, if the agency head will
19 consider granting a waiver, the criteria to be used in
20 granting the waiver.

21 “(C) The agency head shall make the final determina-
22 tion regarding whether to grant a waiver under subpara-
23 graph (A) with respect to a covered contract before award
24 of the contract.

1 “(3) The head of each executive agency shall imple-
2 ment this section with respect to contracts of that execu-
3 tive agency in accordance with the Federal Acquisition
4 Regulation. The provisions of the Federal Acquisition ap-
5 plicable to the implementation of this section may include
6 definitions, exclusions, limitations, and qualifications.

7 “(f) REQUIRED REGULATIONS.—(1) The Federal Ac-
8 quisition Regulation referred to in section 25(c)(1) of the
9 Office of Federal Procurement Policy Act (41 U.S.C.
10 421(c)(1)) shall contain provisions on the allowability of
11 contractor costs. Such provisions shall define in detail and
12 in specific terms those costs which are unallowable, in
13 whole or in part, under covered contracts. The regulations
14 shall, at a minimum, clarify the cost principles applicable
15 to contractor costs of the following:

16 “(A) Air shows.

17 “(B) Membership in civic, community, and pro-
18 fessional organizations.

19 “(C) Recruitment.

20 “(D) Employee morale and welfare.

21 “(E) Actions to influence (directly or indirectly)
22 executive branch action on regulatory and contract
23 matters (other than costs incurred in regard to con-
24 tract proposals pursuant to solicited or unsolicited
25 bids).

1 “(F) Community relations.

2 “(G) Dining facilities.

3 “(H) Professional and consulting services, in-
4 cluding legal services.

5 “(I) Compensation.

6 “(J) Selling and marketing.

7 “(K) Travel.

8 “(L) Public relations.

9 “(M) Hotel and meal expenses.

10 “(N) Expense of corporate aircraft.

11 “(O) Company-furnished automobiles.

12 “(P) Advertising.

13 “(2) The Federal Acquisition Regulation shall require
14 that a contracting officer not resolve any questioned costs
15 until the contracting officer has obtained—

16 “(A) adequate documentation with respect to
17 such costs; and

18 “(B) the opinion of the executive agency’s con-
19 tract auditor on the allowability of such costs.

20 “(3) The Federal Acquisition Regulation shall pro-
21 vide that, to the maximum extent practicable, an executive
22 agency’s contract auditor be present at any negotiation or
23 meeting with the contractor regarding a determination of
24 the allowability of indirect costs of the contractor.

1 “(4) The Federal Acquisition Regulation shall require
2 that all categories of costs designated in the report of an
3 executive agency’s contract auditor as questioned with re-
4 spect to a proposal for settlement be resolved in such a
5 manner that the amount of the individual questioned costs
6 that are paid will be reflected in the settlement.

7 “(g) APPLICABILITY OF REQUIRED REGULATIONS TO
8 SUBCONTRACTORS.—The regulations prescribed to carry
9 out subsections (e) and (f)(1) shall require, to the maxi-
10 mum extent practicable, that such regulations apply to all
11 subcontractors of a covered contract.

12 “(h) CONTRACTOR CERTIFICATION REQUIRED.—(1)
13 A proposal for settlement of indirect costs applicable to
14 a covered contract shall include a certification by an offi-
15 cial of the contractor that, to the best of the certifying
16 official’s knowledge and belief, all indirect costs included
17 in the proposal are allowable. Any such certification shall
18 be in a form prescribed by the agency head concerned.

19 “(2) The agency head concerned may, in an excep-
20 tional case, waive the requirement for certification under
21 paragraph (1) in the case of any contract if the agency
22 head—

23 “(A) determines in such case that it would be
24 in the interest of the United States to waive such
25 certification; and

1 “(B) states in writing the reasons for that de-
2 termination and makes such determination available
3 to the public.

4 “(i) PENALTIES FOR SUBMISSION OF COST KNOWN
5 AS NOT ALLOWABLE.—The submission to an executive
6 agency of a proposal for settlement of costs for any period
7 after such costs have been accrued that includes a cost
8 that is expressly specified by statute or regulation as being
9 unallowable, with the knowledge that such cost is unallow-
10 able, shall be subject to the provisions of section 287 of
11 title 18, United States Code, and section 3729 of title 31,
12 United States Code.

13 “(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—
14 In a proceeding before a board of contract appeals, the
15 United States Court of Federal Claims, or any other Fed-
16 eral court in which the reasonableness of indirect costs for
17 which a contractor seeks reimbursement from the United
18 States is in issue, the burden of proof shall be upon the
19 contractor to establish that those costs are reasonable.

20 “(k) PROCEEDING COSTS NOT ALLOWABLE.—(1)
21 Except as otherwise provided in this subsection, costs in-
22 curred by a contractor in connection with any criminal,
23 civil, or administrative proceeding commenced by the
24 United States or a State are not allowable as reimbursable
25 costs under a covered contract if the proceeding (A) re-

1 late to a violation of, or failure to comply with, a Federal
2 or State statute or regulation, and (B) results in a disposi-
3 tion described in paragraph (2).

4 “(2) A disposition referred to in paragraph (1)(B) is
5 any of the following:

6 “(A) In the case of a criminal proceeding, a
7 conviction (including a conviction pursuant to a plea
8 of nolo contendere) by reason of the violation or fail-
9 ure referred to in paragraph (1).

10 “(B) In the case of a civil or administrative
11 proceeding involving an allegation of fraud or similar
12 misconduct, a determination of contractor liability
13 on the basis of the violation or failure referred to in
14 paragraph (1).

15 “(C) In the case of any civil or administrative
16 proceeding, the imposition of a monetary penalty by
17 reason of the violation or failure referred to in para-
18 graph (1).

19 “(D) A final decision—

20 “(i) to debar or suspend the contractor,

21 “(ii) to rescind or void the contract, or

22 “(iii) to terminate the contract for default,
23 by reason of the violation or failure referred to in
24 paragraph (1).

1 “(E) A disposition of the proceeding by consent
2 or compromise if such action could have resulted in
3 a disposition described in subparagraph (A), (B),
4 (C), or (D).

5 “(3) In the case of a proceeding referred to in para-
6 graph (1) that is commenced by the United States and
7 is resolved by consent or compromise pursuant to an
8 agreement entered into by a contractor and the United
9 States, the costs incurred by the contractor in connection
10 with such proceeding that are otherwise not allowable as
11 reimbursable costs under such paragraph may be allowed
12 to the extent specifically provided in such agreement.

13 “(4) In the case of a proceeding referred to in para-
14 graph (1) that is commenced by a State, the agency head
15 that awarded the covered contract involved in the proceed-
16 ing may allow the costs incurred by the contractor in con-
17 nection with such proceeding as reimbursable costs if the
18 agency head determines, under regulations prescribed by
19 such agency head, that the costs were incurred as a result
20 of (A) a specific term or condition of the contract, or (B)
21 specific written instructions of the agency.

22 “(5)(A) Except as provided in subparagraph (C),
23 costs incurred by a contractor in connection with a crimi-
24 nal, civil, or administrative proceeding commenced by the
25 United States or a State in connection with a covered con-

1 tract may be allowed as reimbursable costs under the con-
2 tract if such costs are not disallowable under paragraph
3 (1), but only to the extent provided in subparagraph (B).

4 “(B)(i) The amount of the costs allowable under sub-
5 paragraph (A) in any case may not exceed the amount
6 equal to 80 percent of the amount of the costs incurred,
7 to the extent that such costs are determined to be other-
8 wise allowable and allocable under the Federal Acquisition
9 Regulations.

10 “(ii) Regulations issued for the purpose of clause (i)
11 shall provide for appropriate consideration of the complex-
12 ity of procurement litigation, generally accepted principles
13 governing the award of legal fees in civil actions involving
14 the United States as a party, and such other factors as
15 may be appropriate.

16 “(C) In the case of a proceeding referred to in sub-
17 paragraph (A), contractor costs otherwise allowable as re-
18 imburseable costs under this paragraph are not allowable
19 if (i) such proceeding involves the same contractor mis-
20 conduct alleged as the basis of another criminal, civil, or
21 administrative proceeding, and (ii) the costs of such other
22 proceeding are not allowable under paragraph (1).

23 “(6) In this subsection:

24 “(A) The term ‘proceeding’ includes an inves-
25 tigation.

1 “(B) The term ‘costs’, with respect to a pro-
2 ceeding—

3 “(i) means all costs incurred by a contrac-
4 tor, whether before or after the commencement
5 of any such proceeding; and

6 “(ii) includes—

7 “(I) administrative and clerical ex-
8 penses;

9 “(II) the cost of legal services, includ-
10 ing legal services performed by an em-
11 ployee of the contractor;

12 “(III) the cost of the services of ac-
13 countants and consultants retained by the
14 contractor; and

15 “(IV) the pay of directors, officers,
16 and employees of the contractor for time
17 devoted by such directors, officers, and em-
18 ployees to such proceeding.

19 “(C) The term ‘penalty’ does not include res-
20 titution, reimbursement, or compensatory damages.

21 “(l) COVERED CONTRACT DEFINED.—(1) In this sec-
22 tion, the term ‘covered contract’ means a contract for an
23 amount in excess of \$500,000 that is entered into by an
24 executive agency, except that such term does not include
25 a fixed-price contract without cost incentives.

1 “(2) Effective on October 1 of each year that is divis-
 2 ible by 5, the amount set forth in paragraph (1) shall be
 3 adjusted to the amount that is equal to the fiscal year
 4 1994 constant dollar value of the amount set forth. An
 5 amount, as so adjusted, that is not evenly divisible by
 6 \$50,000 shall be rounded to the nearest multiple of
 7 \$50,000. In the case of an amount that is evenly divisible
 8 by \$25,000 but is not evenly divisible by \$50,000, the
 9 amount shall be rounded to the next higher multiple of
 10 \$50,000.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
 12 in the first section of such Act is amended by striking out
 13 the item relating to section 306 and inserting in lieu there-
 14 of the following:

“Sec. 306. Allowable costs.”.

15 **PART III—ACQUISITIONS GENERALLY**

16 **SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-**
 17 **TORS.**

18 Section 24 of the Office of Federal Procurement Pol-
 19 icy Act (41 U.S.C. 420) is repealed.

20 **Subtitle C—Audit and Access to**
 21 **Records**

22 **PART I—ARMED SERVICES ACQUISITIONS**

23 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY**
 24 **TO EXAMINE RECORDS OF CONTRACTORS.**

25 (a) AUTHORITY.—

1 (1) IN GENERAL.—Section 2313 of title 10,
2 United States Code, is amended to read as follows:

3 **“§ 2313. Examination of records of contractor**

4 “(a) AGENCY AUTHORITY.—The head of an agency,
5 acting through an authorized representative—

6 “(1) is entitled to inspect the plant and audit
7 the records of—

8 “(A) a contractor performing a cost-reim-
9 bursement, incentive, time-and-materials, labor-
10 hour, or price-redeterminable contract, or any
11 combination of such contracts, made by that
12 agency under this chapter; and

13 “(B) a subcontractor performing any cost-
14 reimbursement, incentive, time-and-materials,
15 labor-hour, or price-redeterminable subcontract
16 under a contract referred to in subparagraph
17 (A) or under any combination of such contracts;
18 and

19 “(2) shall, for the purpose of evaluating the ac-
20 curacy, completeness, and currency of cost or pricing
21 data required to be submitted pursuant to section
22 2306a of this title with respect to a contract or sub-
23 contract, have the right to examine all records of the
24 contractor or subcontractor related to—

1 “(A) the proposal for the contract or sub-
2 contract;

3 “(B) the discussions conducted on the pro-
4 posal;

5 “(C) pricing of the contract or subcontract;
6 or

7 “(D) performance of the contract or sub-
8 contract.

9 “(b) LIMITATION ON PREAWARD AUDITS RELATING
10 TO INDIRECT COSTS.—The head of an agency may not
11 perform a preaward audit to evaluate proposed indirect
12 costs under any contract, subcontract, or modification to
13 be entered into in accordance with this chapter in any case
14 in which the contracting officer determines that the objec-
15 tives of the audit can reasonably be met by accepting the
16 results of an audit conducted by any other department or
17 agency of the Federal Government within one year preced-
18 ing the date of the contracting officer’s determination.

19 “(c) SUBPOENA POWER.—(1) The Director of the
20 Defense Contract Audit Agency (or any successor agency)
21 may require by subpoena the production of records of a
22 contractor, access to which is provided to the Secretary
23 of Defense or Secretary of a military department by sub-
24 section (a).

1 “(2) Any such subpoena, in the case of contumacy
2 or refusal to obey, shall be enforceable by order of an ap-
3 propriate United States district court.

4 “(3) The authority provided by paragraph (1) may
5 not be redelegated.

6 “(4) The Director (or any successor official) shall
7 submit an annual report to the Secretary of Defense on
8 the exercise of such authority during the preceding year
9 and the reasons why such authority was exercised in any
10 instance. The Secretary shall forward a copy of each such
11 report to the Committees on Armed Services of the Senate
12 and House of Representatives.

13 “(d) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
14 cept as provided in paragraph (2), each contract awarded
15 after using procedures other than sealed bid procedures
16 shall provide that the Comptroller General and his rep-
17 resentatives are entitled to examine any records of the
18 contractor, or any of its subcontractors, that directly per-
19 tain to, and involve transactions relating to, the contract
20 or subcontract.

21 “(2) Paragraph (1) does not apply to a contract or
22 subcontract with a foreign contractor or foreign sub-
23 contractor if the head of the agency concerned determines,
24 with the concurrence of the Comptroller General or his
25 designee, that the application of that paragraph to the

1 contract or subcontract would not be in the public interest.
2 However, the concurrence of the Comptroller General or
3 his designee is not required—

4 “(A) where the contractor or subcontractor is a
5 foreign government or agency thereof or is precluded
6 by the laws of the country involved from making its
7 records available for examination; and

8 “(B) where the head of the agency determines,
9 after taking into account the price and availability of
10 the property and services from United States
11 sources, that the public interest would be best served
12 by not applying paragraph (1).

13 “(3) Paragraph (1) may not be construed to require
14 a contractor or subcontractor to create or maintain any
15 record that the contractor or subcontractor does not main-
16 tain in the ordinary course of business or pursuant to an-
17 other provision of law.

18 “(e) LIMITATION.—The right of the head of an agen-
19 cy under subsection (a), and the right of the Comptroller
20 General under subsection (d), with respect to a contract
21 or subcontract shall expire three years after final payment
22 under such contract or subcontract.

23 “(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—
24 This section is inapplicable with respect to the following
25 contracts:

1 “(1) Contracts for utility services at rates not
2 exceeding those established to apply uniformly to the
3 public, plus any applicable reasonable connection
4 charge.

5 “(g) RECORDS DEFINED.—In this section, the term
6 ‘records’ includes books, documents, accounting proce-
7 dures and practices, and other data, regardless of type and
8 regardless of whether such items are in written form, in
9 the form of computer data, or in any other form.”.

10 (2) CLERICAL AMENDMENT.—The item relating
11 to such section in the table of sections at the begin-
12 ning of chapter 137 of title 10, United States Code,
13 is amended to read as follows:

“2313. Examination of records of contractor.”.

14 (b) REPEAL OF SUPERSEDED PROVISION.—

15 (1) REPEAL.—Section 2406 of title 10, United
16 States Code, is repealed.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 141 of such title
19 is amended by striking out the item relating to sec-
20 tion 2406.

21 **PART II—CIVILIAN AGENCY ACQUISITIONS**

22 **SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CON-**
23 **TRACTORS.**

24 (a) AUTHORITY.—

1 (1) IN GENERAL.—Title III of the Federal
2 Property and Administrative Services Act of 1949
3 (41 U.S.C. 251 et seq.), as amended by section
4 1251(a), is further amended by inserting after sec-
5 tion 304A the following new section:

6 “EXAMINATION OF RECORDS OF CONTRACTOR

7 “SEC. 304B. (a) AGENCY AUTHORITY.—The head of
8 an executive agency, acting through an authorized rep-
9 resentative—

10 “(1) is entitled to inspect the plant and audit
11 the records of—

12 “(A) a contractor performing a cost-reim-
13 bursement, incentive, time-and-materials, labor-
14 hour, or price-redeterminable contract, or any
15 combination of such contracts, made by that ex-
16 ecutive agency under this title; and

17 “(B) a subcontractor performing any cost-
18 reimbursement, incentive, time-and-materials,
19 labor-hour, or price-redeterminable subcontract
20 under a contract referred to in subparagraph
21 (A) or under any combination of such contracts;
22 and

23 “(2) shall, for the purpose of evaluating the ac-
24 curacy, completeness, and currency of cost or pricing
25 data required to be submitted pursuant to section
26 304A with respect to a contract or subcontract, have

1 the right to examine all records of the contractor or
2 subcontractor related to—

3 “(A) the proposal for the contract or sub-
4 contract;

5 “(B) the discussions conducted on the pro-
6 posal;

7 “(C) pricing of the contract or subcontract;
8 or

9 “(D) performance of the contract or sub-
10 contract.

11 “(b) LIMITATION ON PREAWARD AUDITS RELATING
12 TO INDIRECT COSTS.—The agency head may not perform
13 a preaward audit to evaluate proposed indirect costs under
14 any contract, subcontract, or modification to be entered
15 into in accordance with this title in any case in which the
16 contracting officer determines that the objectives of the
17 audit can reasonably be met by accepting the results of
18 an audit conducted by any other department or agency
19 of the Federal Government within one year preceding the
20 date of the contracting officer’s determination.

21 “(c) SUBPOENA POWER.—(1) The agency head may
22 require by subpoena the production of records of a con-
23 tractor, access to which is provided by subsection (a).

1 “(2) Any such subpoena, in the case of contumacy
2 or refusal to obey, shall be enforceable by order of an ap-
3 propriate United States district court.

4 “(3) The authority provided by paragraph (1) may
5 not be delegated.

6 “(4) In the year following a year in which the head
7 of an executive agency exercises the authority provided in
8 paragraph (1), the agency head shall submit to the Com-
9 mittee on Governmental Affairs of the Senate and the
10 Committee on Government Operations of the House of
11 Representatives a report on the exercise of such authority
12 during such preceding year and the reasons why such au-
13 thority was exercised in any instance.

14 “(d) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
15 cept as provided in paragraph (2), each contract awarded
16 after using procedures other than sealed bid procedures
17 shall provide that the Comptroller General and his rep-
18 resentatives are entitled to examine any records of the
19 contractor, or any of its subcontractors, that directly per-
20 tain to, and involve transactions relating to, the contract
21 or subcontract.

22 “(2) Paragraph (1) does not apply to a contract or
23 subcontract with a foreign contractor or foreign sub-
24 contractor if the agency head concerned determines, with
25 the concurrence of the Comptroller General or his des-

1 ignee, that the application of that paragraph to the con-
2 tract or subcontract would not be in the public interest.
3 However, the concurrence of the Comptroller General or
4 his designee is not required.

5 “(3) Paragraph (1) may not be construed to require
6 a contractor or subcontractor to create or maintain any
7 record that the contractor or subcontractor does not main-
8 tain in the ordinary course of business or pursuant to an-
9 other provision of law—

10 “(A) where the contractor or subcontractor is a
11 foreign government or agency thereof or is precluded
12 by the laws of the country involved from making its
13 records available for examination; and

14 “(B) where the agency head determines, after
15 taking into account the price and availability of the
16 property and services from United States sources,
17 that the public interest would be best served by not
18 applying paragraph (1).

19 “(e) LIMITATION.—The right of an agency head
20 under subsection (a), and the right of the Comptroller
21 General under subsection (d), with respect to a contract
22 or subcontract shall expire three years after final payment
23 under such contract or subcontract.

1 “(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—
2 This section is inapplicable with respect to the following
3 contracts:

4 “(1) CONTRACTS.—For utility services at rates
5 not exceeding those established to apply uniformly to
6 the public, plus any applicable reasonable connection
7 charge.

8 “(g) RECORDS DEFINED.—In this section, the term
9 ‘records’ includes books, documents, accounting proce-
10 dures and practices, and other data, regardless of type and
11 regardless of whether such items are in written form, in
12 the form of computer data, or in any other form.”.

13 (2) CLERICAL AMENDMENT.—The table of con-
14 tents in the first section of such Act, as amended by
15 section 1251(b), is further amended by inserting
16 after the item relating to section 304A the following:

“Sec. 304B. Examination of records of contractor.”.

17 (b) REPEAL OF SUPERSEDED PROVISION.—Section
18 304 of the Federal Property and Administrative Services
19 Act of 1949 (41 U.S.C. 254) is amended by striking out
20 subsection (c).

21 **Subtitle D—Cost Accounting** 22 **Standards**

23 **SEC. 2301. EXCEPTIONS TO COVERAGE.**

24 Section 26(f)(2) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 422(f)(2)) is amended—

1 (1) by inserting “(A)” after “(2)”;

2 (2) by striking out “, other than contracts or
3 subcontracts” and all that follows and inserting in
4 lieu thereof a period; and

5 (3) by inserting at the end the following:

6 “(B) Subparagraph (A) does not apply to the follow-
7 ing contracts or subcontracts:

8 “(i) Contracts or subcontracts where the price
9 negotiated is based on established catalog or market
10 prices of commercial items sold in substantial quan-
11 tities to the general public.

12 “(ii) Contracts or subcontracts where the price
13 negotiated is based on prices set by law or regula-
14 tion.

15 “(iii) Any other firm fixed-price contract or
16 subcontract for commercial items which is excepted
17 from the requirement to provide cost or pricing data
18 pursuant to subsection (b) or (d) of section 2306a
19 of title 10, United States Code, or subsection (b) or
20 (d) of section 304A of the Federal Property and Ad-
21 ministrative Services Act of 1949.

22 “(C) In this paragraph, the term ‘subcontract’ in-
23 cludes a transfer of commercial items between divisions,
24 subsidiaries, or affiliates of a contractor.”.

1 **SEC. 2302. REPEAL OF OBSOLETE DEADLINE REGARDING**
2 **PROCEDURAL REGULATIONS FOR THE COST**
3 **ACCOUNTING STANDARDS BOARD.**

4 Section 26(f)(3) of the Office of Federal Procurement
5 Policy Act (41 U.S.C. 422(f)(3)) is amended in the first
6 sentence by striking out “Not later than 180 days after
7 the date of the enactment of this section, the Adminis-
8 trator” and inserting in lieu thereof “The Administrator”.

9 **Subtitle E—Administration of Con-**
10 **tract Provisions Relating to**
11 **Price, Delivery, and Product**
12 **Quality**

13 **PART I—ARMED SERVICES ACQUISITIONS**

14 **SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND**
15 **SHIP SPARE PARTS; QUALITY CONTROL.**

16 (a) REPEAL.—Section 2383 of title 10, United States
17 Code, is repealed.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of chapter 141 of such title is amended
20 by striking out the item relating to section 2383.

21 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**
22 **ON SYSTEMS.**

23 Section 2403(h) of title 10, United States Code, is
24 amended—

25 (1) by redesignating paragraph (2) as para-
26 graph (3); and

1 (2) by inserting after paragraph (1) the follow-
2 ing new paragraph (2):

3 “(2) The regulations shall include the following:

4 “(A) Guidelines for negotiating contractor guar-
5 antees that are reasonable and cost effective, as de-
6 termined on the basis of the likelihood of defects and
7 the estimated cost of correcting such defects.

8 “(B) Procedures for administering contractor
9 guarantees.

10 “(C) Guidelines for determining the cases in
11 which it may be appropriate to waive the require-
12 ments of this section.”.

13 **PART II—ACQUISITIONS GENERALLY**

14 **SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EX-**
15 **PANSION OF AUTHORITY TO PROHIBIT**
16 **SETOFFS AGAINST ASSIGNEES; REORGANIZA-**
17 **TION OF SECTION; REVISION OF OBSOLETE**
18 **PROVISIONS.**

19 Section 3737 of the Revised Statutes (41 U.S.C. 15)
20 is amended to read as follows:

21 “SEC. 3737. (a) No contract or order, or any interest
22 therein, shall be transferred by the party to whom such
23 contract or order is given to any other party, and any such
24 transfer shall cause the annulment of the contract or order
25 transferred, so far as the United States is concerned. All

1 rights of action, however, for any breach of such contract
2 by the contracting parties, are reserved to the United
3 States.

4 “(b) The provisions of subsection (a) shall not apply
5 in any case in which the moneys due or to become due
6 from the United States or from any agency or department
7 thereof, under a contract providing for payments aggre-
8 gating \$1,000 or more, are assigned to a bank, trust com-
9 pany, or other financing institution, including any Federal
10 lending agency, provided:

11 “(1) That, in the case of any contract entered
12 into after October 9, 1940, no claim shall be as-
13 signed if it arises under a contract which forbids
14 such assignment.

15 “(2) That, unless otherwise expressly permitted
16 by such contract, any such assignment shall cover all
17 amounts payable under such contract and not al-
18 ready paid, shall not be made to more than one
19 party, and shall not be subject to further assign-
20 ment, except that any such assignment may be made
21 to one party as agent or trustee for two or more
22 parties participating in such financing.

23 “(3) That, in the event of any such assignment,
24 the assignee thereof shall file written notice of the

1 assignment together with a true copy of the instru-
2 ment of the assignment with—

3 “(A) the contracting officer or the head of
4 his department or agency;

5 “(B) the surety or sureties upon the bond
6 or bonds, if any, in connection with such con-
7 tract; and

8 “(C) the disbursing officer, if any, des-
9 ignated in such contract to make payment.

10 “(c) Notwithstanding any law to the contrary govern-
11 ing the validity of assignments, any assignment pursuant
12 to this section shall constitute a valid assignment for all
13 purposes.

14 “(d) In any case in which moneys due or to become
15 due under any contract are or have been assigned pursu-
16 ant to this section, no liability of any nature of the as-
17 signor to the United States or any department or agency
18 thereof, whether arising from or independently of such
19 contract, shall create or impose any liability on the part
20 of the assignee to make restitution, refund, or repayment
21 to the United States of any amount heretofore since July
22 1, 1950, or hereafter received under the assignment.

23 “(e) Any contract of the Department of Defense, the
24 General Services Administration, the Department of En-
25 ergy, or any other department or agency of the United

1 States designated by the President, except any such con-
2 tract under which full payment has been made, may, upon
3 a determination of need by the President, provide or be
4 amended without consideration to provide that payments
5 to be made to the assignee of any moneys due or to become
6 due under such contract shall not be subject to reduction
7 or setoff. Each such determination of need shall be pub-
8 lished in the Federal Register.

9 “(f) If a provision described in subsection (e) or a
10 provision to the same general effect has been at any time
11 heretofore or is hereafter included or inserted in any such
12 contract, payments to be made thereafter to an assignee
13 of any moneys due or to become due under such contract
14 shall not be subject to reduction or setoff for any liability
15 of any nature of the assignor to the United States or any
16 department or agency thereof which arises independently
17 of such contract, or hereafter for any liability of the as-
18 signor on account of—

19 “(1) renegotiation under any renegotiation stat-
20 ute or under any statutory renegotiation article in
21 the contract;

22 “(2) fines;

23 “(3) penalties (which term does not include
24 amounts which may be collected or withheld from

1 the assignor in accordance with or for failure to
2 comply with the terms of the contract); or

3 “(4) taxes, social security contributions, or the
4 withholding or non withholding of taxes or social se-
5 curity contributions, whether arising from or inde-
6 pendently of such contract.

7 “(g) Except as herein otherwise provided, nothing in
8 this section shall be deemed to affect or impair rights of
9 obligations heretofore accrued.”.

10 **SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF**
11 **CONTRACTS WITH GAO.**

12 Section 3743 of the Revised Statutes (41 U.S.C. 20)
13 is repealed.

14 **Subtitle F—Claims and Disputes**

15 **PART I—ARMED SERVICES ACQUISITIONS**

16 **SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.**

17 (a) DoD CERTIFICATION REQUIREMENT IN CON-
18 Flict WITH GOVERNMENTWIDE REQUIREMENT.—

19 (1) INAPPLICABILITY OF REQUIREMENT TO
20 CONTRACT CLAIMS.—Section 2410 of title 10, Unit-
21 ed States Code, is amended to read as follows:

22 **“§2410. Requests for equitable adjustment or other**
23 **relief: certification**

24 “(a) CERTIFICATION REQUIREMENT.—A request for
25 equitable adjustment to contract terms or request for re-

1 relief under Public Law 85–804 (50 U.S.C. 1431 et seq.)
2 that exceeds the simplified acquisition threshold may not
3 be paid unless a person authorized to certify the request
4 on behalf of the contractor certifies, at the time the re-
5 quest is submitted, that—

6 “(1) the request is made in good faith, and

7 “(2) the supporting data are accurate and com-
8 plete to the best of that person’s knowledge and be-
9 lief.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions at the beginning of chapter 141 of such title
12 is amended by striking out the item relating to sec-
13 tion 2410 and inserting in lieu thereof the following:

“2410. Requests for equitable adjustment or other relief: certification.”.

14 (b) RESTRICTION ON LEGISLATIVE PAYMENT OF
15 CLAIMS.—Section 2410 of title 10, United States Code,
16 as amended by subsection (a), is further amended by add-
17 ing at the end the following new subsection:

18 “(b) RESTRICTION ON LEGISLATIVE PAYMENT OF
19 CLAIMS.—In the case of a contract of an agency named
20 in section 2303(a) of this title, no provision of a law en-
21 acted after September 30, 1994, that directs the payment
22 of a particular claim under such contract, a particular re-
23 quest for equitable adjustment to any term of such con-
24 tract, or a particular request for relief under Public Law

1 85–804 (50 U.S.C. 1431 et seq.) regarding such contract
2 may be implemented unless such provision of law—

3 “(1) specifically refers to this subsection; and

4 “(2) specifically states that this subsection does
5 not apply with respect to the payment directed by
6 that provision of law.”.

7 (c) DEFINITION.—Section 2410, as amended by sub-
8 sections (a) and (b), is further amended by adding at the
9 end the following:

10 “(c) DEFINITION.—In this section, the term ‘sim-
11 plified acquisition threshold’ has the meaning given that
12 term in section 2302(4) of this title.”.

13 (d) REPEAL OF RELATED PROVISIONS.—

14 (1) CERTIFICATION REGULATIONS FOR CON-
15 TRACT CLAIMS EXCEEDING \$100,000.—

16 (A) REPEAL.—Section 2410e of title 10,
17 United States Code, is repealed.

18 (B) CLERICAL AMENDMENT.—The table of
19 sections at the beginning of chapter 141 of such
20 title is amended by striking out the item relat-
21 ing to section 2410e.

22 (2) CONFORMING REPEAL.—Section 813(b) of
23 the National Defense Authorization Act for Fiscal
24 Year 1993 (Public Law 102–484, 106 Stat. 2453),
25 is repealed.

1 **SEC. 2502. SHIPBUILDING CLAIMS.**

2 (a) LIMITATION ON PERIOD FOR SUBMISSION.—

3 (1) INCREASED PERIOD.—Subsection (a) of sec-
4 tion 2405 of title 10, United States Code, is amend-
5 ed—

6 (A) by striking out “after December 7,
7 1983,” and inserting in lieu thereof “on or
8 after the date of the enactment of the Federal
9 Acquisition Streamlining Act of 1994”; and

10 (B) by striking out “18 months” and in-
11 serting in lieu thereof “6 years”.

12 (2) SAVINGS PROVISION.—Notwithstanding the
13 6-year period provided in subsection (a) of section
14 2405 of title 10, United States Code, as amended by
15 paragraph (1), the period applicable under such sub-
16 section in the case of a shipbuilding contract entered
17 into after December 7, 1983, and before the date of
18 the enactment of the Federal Acquisition Streamlin-
19 ing Act of 1994 shall continue to be 18 months.

20 (b) RESUBMISSION WITH CORRECTED CERTIFI-
21 CATION.—Subsection (c) of such section is repealed.

1 **PART II—ACQUISITIONS GENERALLY**

2 **SEC. 2551. CLAIMS JURISDICTION OF UNITED STATES DIS-**
3 **TRICT COURTS AND THE UNITED STATES**
4 **COURT OF FEDERAL CLAIMS.**

5 (a) CONCURRENT JURISDICTION OF UNITED STATES
6 DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.—
7 Subsection (a) of section 1346 of title 28, United States
8 Code, is amended to read as follows:

9 “(a)(1) The district courts shall have original juris-
10 diction, concurrent with the United States Court of Fed-
11 eral Claims, of any civil action against the United States
12 for the recovery of any internal-revenue tax alleged to have
13 been erroneously or illegally assessed or collected, or any
14 penalty claimed to have been collected without authority
15 or any sum alleged to have been excessive or in any man-
16 ner wrongfully collected under the internal-revenue laws.

17 “(2)(A) Except as provided in subparagraph (B), the
18 district courts shall have original jurisdiction, concurrent
19 with the United States Court of Federal Claims, of any
20 other civil action or claim against the United States, not
21 exceeding \$10,000 in amount, founded either upon the
22 Constitution, or any Act of Congress, or any regulation
23 of an executive department, or upon any express or im-
24 plied contract with the United States, or for liquidated or
25 unliquidated damages in cases not sounding in tort.

1 “(B) The district courts shall not have jurisdiction
2 over any civil action or claim against the United States
3 or any Federal entity which relates in any manner to a
4 contract to which the Contract Disputes Act of 1978 (41
5 U.S.C. 601 et seq.) applies, including a claim that seeks
6 to establish the existence or nonexistence of such a con-
7 tract, seeks to establish that such a contract is void, or
8 seeks to determine and construe the terms of such a con-
9 tract. The district courts do not have jurisdiction over any
10 civil action or claim described in the preceding sentence
11 pursuant to section 1331, 1334, or 1346(a)(2)(B) of this
12 title, any provision of law giving a Federal entity the right
13 to sue or be sued in its own name, or any other provision
14 of law.”.

15 (b) JURISDICTION OF THE UNITED STATES COURT
16 OF FEDERAL CLAIMS UNDER THE TUCKER ACT.—Sec-
17 tion 1491 of title 28, United States Code, as amended by
18 section 1422, is further amended by inserting after sub-
19 section (c) the following:

20 “(d)(1) The United States Court of Federal Claims
21 shall have jurisdiction over any civil action or claim
22 against the United States which relates in any manner to
23 a contract to which the Contract Disputes Act of 1978
24 (41 U.S.C. 601 et seq.) applies, including a civil action
25 or claim that seeks to establish the existence or

1 nonexistence of such a contract, seeks to establish that
2 such contract is void, or seeks to determine and construe
3 the terms of any such contract.

4 “(2) The jurisdiction of the United States Court of
5 Federal Claims is, pursuant to section 1346(a)(2)(B) of
6 this title, exclusive as to the district courts of the United
7 States.”.

8 **SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.**

9 (a) PERIOD FOR FILING CLAIMS.—

10 (1) SIX-YEAR LIMITATION.—Section 6 of the
11 Contract Disputes Act of 1978 (41 U.S.C. 605) is
12 amended in subsection (a) by inserting after the sec-
13 ond sentence the following: “Each claim by a con-
14 tractor against the government relating to a contract
15 and each claim by the government against a contrac-
16 tor relating to a contract shall be submitted within
17 6 years after the occurrence of the event or events
18 giving rise to the claim. The preceding sentence does
19 not apply to a claim by the government against a
20 contractor that is based on a claim by the contractor
21 involving fraud.”.

22 (2) LIMITATION ON APPLICABILITY TO EXIST-
23 ING CONTRACTS.—Notwithstanding the third sen-
24 tence of section 6(a) of the Contract Disputes Act
25 of 1978, as added by paragraph (1), if a contract in

1 existence on the date of the enactment of this Act
2 requires that a claim referred to in that sentence be
3 submitted earlier than 6 years after the occurrence
4 of the event or events giving rise to the claim, then
5 the claim shall be submitted within the period re-
6 quired by the contract. The preceding sentence does
7 not apply to a claim by the Federal Government
8 against a contractor that is based on a claim by the
9 contractor involving fraud.

10 (b) INCREASED THRESHOLD FOR CERTIFICATION,
11 DECISION, AND NOTIFICATION REQUIREMENTS.—Sub-
12 section (c) of such section is amended by striking out
13 “\$50,000” each place it appears and inserting in lieu
14 thereof “\$100,000”.

15 (c) INCREASED MAXIMUM FOR APPLICABILITY OF
16 ACCELERATED PROCEDURES.—Section 8(f) of the Con-
17 tract Disputes Act of 1978 (41 U.S.C. 607(f)) is amended
18 by striking out “\$50,000” in the first sentence and insert-
19 ing in lieu thereof “\$150,000”.

20 (d) INCREASED MAXIMUM FOR APPLICABILITY OF
21 SMALL CLAIMS PROCEDURE.—Section 9(a) of the Con-
22 tract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended
23 by striking out “\$10,000” in the first sentence and insert-
24 ing in lieu thereof “\$50,000”.

1 (e) REDUCED PERIOD FOR FILING ACTION IN COURT
2 OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41
3 U.S.C. 609(a)(3)) is amended by striking out “twelve
4 months” and inserting in lieu thereof “90 days”.

5 **SEC. 2553. EXTENSION OF ALTERNATIVE DISPUTE RESOLU-**
6 **TION AUTHORITY.**

7 Section 6(e) of the Contracts Disputes Act of 1978
8 (41 U.S.C. 605(e)) is amended by striking out “October
9 1, 1995” and inserting in lieu thereof “October 1, 1999”.

10 **SEC. 2554. EXPEDITED RESOLUTION OF CONTRACT ADMIN-**
11 **ISTRATION COMPLAINTS.**

12 (a) REGULATIONS REQUIRED.—The Federal Acquisi-
13 tion Regulation shall include provisions that require a con-
14 tracting officer—

15 (1) to make every reasonable effort to respond
16 in writing within 30 days to any written request for
17 a contracting officer’s decision with respect to a
18 matter relating to the administration of a contract
19 that is received from a small business concern; and

20 (2) in the event that the contracting officer is
21 unable to render a decision within the 30-day period,
22 to transmit to the contractor within such period a
23 written notification of a specific date by which the
24 contracting officer expects to reach a decision.

1 (b) RULE OF CONSTRUCTION.—Nothing in this pro-
2 vision shall be considered as creating any rights under the
3 Contract Disputes Act (41 U.S.C. 601 et seq.).

4 (c) DEFINITION.—In this section, the term “small
5 business concern” means a business concern that meets
6 the requirements of section 3(a) of the Small Business Act
7 (15 U.S.C. 632(a)) and the regulations promulgated pur-
8 suant to that section.

9 ***TITLE III—SERVICE SPECIFIC***
10 ***AND MAJOR SYSTEMS STATUTES***
11 **Subtitle A—Major Systems Statutes**

12 **SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTI-**
13 **MATES AND MANPOWER ESTIMATES BEFORE**
14 **DEVELOPMENT OR PRODUCTION.**

15 (a) CONTENT AND SUBMISSION OF ESTIMATES.—
16 Section 2434 of title 10, United States Code, is amended
17 by striking out subsection (b) and inserting in lieu thereof
18 the following:

19 “(b) REGULATIONS.—The Secretary of Defense shall
20 prescribe regulations governing the content and submis-
21 sion of the estimates required by subsection (a). The regu-
22 lations shall require—

23 “(1) that the independent estimate of the cost
24 of a program—

1 “(A) be prepared by an office or other en-
2 tity that is not under the supervision, direction,
3 or control of the military department, Defense
4 Agency, or other component of the Department
5 of Defense that is directly responsible for carry-
6 ing out the development or acquisition of the
7 program; and

8 “(B) include all costs of development, pro-
9 curement, and operations and support, without
10 regard to funding source or management con-
11 trol; and

12 “(2) that the manpower estimate include the
13 total personnel required to train for, operate, main-
14 tain, and support the program upon full operational
15 deployment.”.

16 (b) TERMINOLOGY CORRECTION.—Subsection (a) of
17 such section is amended by striking out “full-scale engi-
18 neering development” and inserting in lieu thereof “engi-
19 neering and manufacturing development”.

20 **SEC. 3002. ENHANCED PROGRAM STABILITY.**

21 (a) BASELINE DESCRIPTIONS AND DEVIATION RE-
22 PORTING.—Section 2435 of title 10, United States Code,
23 is amended—

24 (1) in subsection (a)—

25 (A) by striking out paragraph (2); and

1 (B) in paragraph (1)—

2 (i) by striking out “(1)”; and

3 (ii) by redesignating subparagraphs

4 (A) and (B) as paragraphs (1) and (2), re-
5 spectively; and

6 (2) by striking out subsection (b) and inserting
7 in lieu thereof the following:

8 “(b) REGULATIONS.—The Secretary of Defense shall
9 prescribe regulations governing—

10 “(1) the content of baseline descriptions, which
11 shall include the program cost, the program sched-
12 ule, and a program performance description;

13 “(2) the submission of reports on deviations of
14 a program from the baseline description by the pro-
15 gram manager to the Secretary of the military de-
16 partment concerned and the Under Secretary of De-
17 fense for Acquisition and Technology;

18 “(3) procedures for review of deviation reports
19 within the Department of Defense; and

20 “(4) procedures for submission and approval of
21 revised baseline descriptions.

22 “(c) BASELINE DESCRIPTION REQUIRED BEFORE
23 OBLIGATION OF FUNDS.—(1) Except as provided in para-
24 graph (2), no amount appropriated or otherwise made
25 available to the Department of Defense may be obligated

1 for a major defense acquisition program before a baseline
2 description for the program is approved in accordance with
3 the procedures prescribed pursuant to subsection (b)(4).

4 “(2) An obligation otherwise prohibited by paragraph
5 (1) may be incurred if approved in advance by the Under
6 Secretary of Defense for Acquisition and Technology.”.

7 (b) TERMINOLOGY CORRECTION.—Subsection (a)(1)
8 of such section, as redesignated by subsection
9 (a)(1)(B)(ii), is amended by striking out “full-scale engi-
10 neering development” and inserting in lieu thereof “engi-
11 neering and manufacturing development”.

12 **SEC. 3003. REPEAL OF REQUIREMENT TO DESIGNATE CER-**
13 **TAIN MAJOR DEFENSE ACQUISITION PRO-**
14 **GRAMS AS DEFENSE ENTERPRISE PRO-**
15 **GRAMS.**

16 Section 809 of the National Defense Authorization
17 Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C.
18 2430 note) is amended—

19 (1) by striking out subsection (d); and

20 (2) by redesignating subsections (e), (f), (g),

21 and (h) as subsections (d), (e), (f), and (g), respec-

22 tively.

1 **SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE**
2 **PROTOTYPING IN MAJOR PROGRAMS.**

3 (a) REPEAL.—Section 2438 of title 10, United States
4 Code, is repealed.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of chapter 144 of such title is amended
7 by striking out the item relating to section 2438.

8 **SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE**
9 **ALTERNATIVE SOURCES IN MAJOR PRO-**
10 **GRAMS.**

11 (a) REPEAL.—Section 2439 of title 10, United States
12 Code, is repealed.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 144 of such title is amended
15 by striking out the item relating to section 2439.

16 **Subtitle B—Testing Statutes**

17 **SEC. 3011. DIRECTOR OF OPERATIONAL TEST AND EVALUA-**
18 **TION TO REPORT DIRECTLY TO SECRETARY**
19 **OF DEFENSE.**

20 Section 139(c) of title 10, United States Code, is
21 amended by inserting after “(c)” the following: “The Di-
22 rector reports directly, without intervening review or ap-
23 proval, to the Secretary of Defense and Deputy Secretary
24 of Defense personally.”.

1 **SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPER-**
2 **ATIONAL TEST AND EVALUATION FOR LIVE**
3 **FIRE TESTING.**

4 (a) CONDUCT OF LIVE FIRE TESTING.—Subsection
5 (b) of section 139 of title 10, United States Code, is
6 amended—

7 (1) by striking out “and” at the end of para-
8 graph (4);

9 (2) by striking out the period at the end of
10 paragraph (5) and inserting in lieu thereof “; and”;
11 and

12 (3) by adding at the end the following new
13 paragraph:

14 “(6) conduct the live fire testing activities of
15 the Department of Defense provided for under sec-
16 tion 2366 of this title.”.

17 (b) ANNUAL REPORT ON LIVE FIRE TESTING.—Sub-
18 section (f) of such section is amended by inserting “(in-
19 cluding live fire testing activities)” in the first sentence
20 after “operational test and evaluation activities”.

21 **SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF**
22 **ANNUAL REPORT ON OPERATIONAL TEST**
23 **AND EVALUATION.**

24 Section 139(f) of title 10, United States Code, is
25 amended by inserting after the second sentence the follow-
26 ing new sentence: “If the Director submits the report to

1 Congress in a classified form, the Director shall concur-
2 rently submit an unclassified version of the report to Con-
3 gress.”.

4 **Subtitle C—Service Specific Laws**

5 **SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CER-** 6 **TAIN RESERVE COMPONENTS.**

7 Section 279 of title 10, United States Code, is
8 amended—

9 (1) by striking out “Notwithstanding” and in-
10 sserting in lieu thereof “(a) ACCEPTANCE BY SEC-
11 RETARY OF A MILITARY DEPARTMENT.—Notwith-
12 standing”; and

13 (2) by adding at the end the following new sub-
14 section:

15 “(b) ACCEPTANCE BY SECRETARY OF DEFENSE.—
16 Notwithstanding section 1342 of title 31, the Secretary
17 of Defense may accept the gratuitous services of an officer
18 of a reserve component (other than an officer of the Army
19 National Guard of the United States or the Air National
20 Guard of the United States) in consultation upon matters
21 relating to the armed forces.”.

22 **SEC. 3022. AUTHORITY TO RENT SAMPLES, DRAWINGS, AND** 23 **OTHER INFORMATION TO OTHERS.**

24 Subchapter V of chapter 148 of title 10, United
25 States Code, is amended in section 2541(a) by inserting

1 “rent,” after “sell,” each place it appears in paragraphs
2 (1) and (2).

3 **SEC. 3023. CIVIL RESERVE AIR FLEET.**

4 (a) DEFINITIONS.—Section 9511 of title 10, United
5 States Code, is amended—

6 (1) in paragraph (1)—

7 (A) by inserting “‘civil aircraft,’” after
8 “‘person,’”;

9 (B) by striking out “meaning” and insert-
10 ing in lieu thereof “meanings”; and

11 (C) by striking out “(49 U.S.C. 1301)”
12 and inserting in lieu thereof “(49 U.S.C. App.
13 1301)”;

14 (2) in paragraph (2), by striking out “pas-
15 senger-cargo” and inserting in lieu thereof “pas-
16 senger cargo”;

17 (3) in paragraph (3), by striking out “cargo-ca-
18 pable” and inserting in lieu thereof “cargo capable”;

19 (4) by striking out paragraph (5) and inserting
20 in lieu thereof the following:

21 “(5) The term ‘cargo convertible aircraft’
22 means a passenger aircraft equipped or designed so
23 that all or substantially all of the main deck of the
24 aircraft can be readily converted for the carriage of
25 property or mail.”;

1 (5) by striking out paragraph (6);

2 (6) by redesignating paragraph (7) as para-
3 graph (6);

4 (7) by redesignating paragraph (8) as para-
5 graph (7) and—

6 (A) in subparagraph (A) of such para-
7 graph, by inserting “under section 9512 of this
8 title” after “and who contracts with the Sec-
9 retary”;

10 (B) by striking out “or” at the end of such
11 subparagraph (A); and

12 (C) by inserting before the period at the
13 end of such paragraph the following: “, or (C)
14 who owns or controls existing aircraft, or will
15 own or control new aircraft, and who contrac-
16 tually commits all or some of such aircraft to
17 the Civil Reserve Air Fleet”;

18 (8) by redesignating paragraphs (9), (10), (11),
19 and (12) as paragraphs (8), (9), (10), and (11), re-
20 spectively; and

21 (9) in paragraph (11), as so redesignated—

22 (A) by striking out “interoperability” and
23 inserting in lieu thereof “compatibility”; and

24 (B) by striking out “a cargo-convertible,
25 cargo-capable, or passenger-cargo combined air-

1 craft” and inserting in lieu thereof “an
2 aeromedical aircraft or a cargo convertible,
3 cargo capable, or passenger cargo combined air-
4 craft”.

5 (b) CONSOLIDATION OF PROVISIONS RELATING TO
6 CONTRACTUAL COMMITMENT OF AIRCRAFT.—Chapter
7 931 of such title is amended—

8 (1) by redesignating subsections (b) and (c) of
9 section 9512 as subsections (c) and (d), respectively;

10 (2) by redesignating subsection (a) of section
11 9513 as subsection (b), transferring such subsection
12 (as so redesignated) to section 9512, and inserting
13 such subsection after subsection (a);

14 (3) by redesignating subsection (b) of section
15 9513 as subsection (e) and transferring such sub-
16 section (as so redesignated) to the end of section
17 9512;

18 (4) in subsection (c) of section 9512, as red-
19 esignated by paragraph (1), by striking out “the terms
20 required by section 9513 of this title and”;

21 (5) in subsection (e) of section 9512, as red-
22 esignated and transferred to such section by para-
23 graph (3), by striking out “under section 9512 of
24 this title” and inserting in lieu thereof “entered into
25 under this section”; and

1 (6) by striking out the heading of section 9513.

2 (c) USE OF MILITARY INSTALLATIONS BY CONTRAC-
3 TORS.—

4 (1) AUTHORITY.—Such chapter, as amended by
5 subsection (b), is further amended by adding at the
6 end the following new section 9513:

7 **“§9513. Use of military installations by Civil Reserve**
8 **Air Fleet contractors**

9 “(a) CONTRACT AUTHORITY.—(1) The Secretary of
10 the Air Force—

11 “(A) may, by contract entered into with any
12 contractor, authorize such contractor to use one or
13 more Air Force installations designated by the Sec-
14 retary; and

15 “(B) with the consent of the Secretary of an-
16 other military department, may, by contract entered
17 into with any contractor, authorize the contractor to
18 use one or more installations, designated by the Sec-
19 retary of the Air Force, that is under the jurisdic-
20 tion of the Secretary of such other military depart-
21 ment.

22 “(2) The Secretary of the Air Force may include in
23 the contract such terms and conditions as the Secretary
24 determines appropriate to promote the national defense or
25 to protect the interests of the United States.

1 “(b) PURPOSES OF USE.—A contract entered into
2 under subsection (a) may authorize use of a designated
3 installation as a weather alternate, a service stop not in-
4 volving the enplaning or deplaning of passengers or cargo,
5 or, in the case of an installation within the United States,
6 for other commercial purposes. Notwithstanding any other
7 provision of the law, the Secretary may establish different
8 levels and types of uses for different installations for com-
9 mercial operations not required by the Department of De-
10 fense and may provide in contracts under subsection (a)
11 for different levels and types of uses by different contrac-
12 tors.

13 “(c) DISPOSITION OF PAYMENTS FOR USE.—Not-
14 withstanding any other provision of law, amounts collected
15 from the contractor for landing fees, services, supplies, or
16 other charges authorized to be collected under the contract
17 shall be credited to the appropriations of the armed forces
18 having jurisdiction over the military installation to which
19 the contract pertains. Amounts so credited to an appro-
20 priation shall be available for obligation for the same pe-
21 riod as the appropriation to which credited.

22 “(d) HOLD HARMLESS REQUIREMENT.—A contract
23 entered into under subsection (a) shall provide that the
24 contractor agrees to indemnify and hold harmless the
25 United States from all actions, suits, or claims of any sort

1 resulting from, relating to, or arising out of any activities
2 conducted, or services or supplies furnished, in connection
3 with the contract.

4 “(e) RESERVATION OF RIGHT TO EXCLUDE CON-
5 TRACTOR.—A contract entered into under subsection (a)
6 shall provide that the Secretary or, in the case of an instal-
7 lation under the jurisdiction of an armed force other than
8 the Air Force, the Secretary concerned may at any time
9 and without prior notice deny access to an installation des-
10 igned under the contract if military exigencies require
11 such action.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of such chapter is amended
14 by striking out the item relating to section 9513 and
15 inserting in lieu thereof the following:

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

16 **SEC. 3024. EXCHANGE OF PERSONNEL.**

17 (a) EXCHANGE AUTHORITY.—Subchapter II of chap-
18 ter 138 of title 10, United States Code, is amended by
19 adding at the end the following new section:

20 **“§ 2350k. Exchange of personnel**

21 “(a) INTERNATIONAL EXCHANGE AGREEMENTS AU-
22 THORIZED.—Under regulations prescribed by the Sec-
23 retary of Defense, the Secretary and the secretaries of the
24 military departments are each authorized to enter into
25 agreements with the governments of foreign countries for

1 the exchange of military and civilian personnel of the De-
2 partment of Defense and military and civilian personnel
3 of the defense departments or ministries of such foreign
4 governments.

5 “(b) ASSIGNMENT OF PERSONNEL.—Pursuant to
6 such agreements, personnel of the foreign defense depart-
7 ments or ministries may be assigned to positions in the
8 Department of Defense, and personnel of the Department
9 of Defense may be assigned to positions in foreign defense
10 departments or ministries. Agreements for the exchange
11 of personnel engaged in research and development activi-
12 ties may provide for assignments to positions in private
13 industry that support the defense departments or min-
14 istries. The specific positions and the individuals to be as-
15 signed must be acceptable to both the sending government
16 and the host government.

17 “(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS
18 REQUIRED.—Each government shall be required under an
19 agreement authorized by subsection (a) to provide person-
20 nel having qualifications, training, and skills that are es-
21 sentially equal to those of the personnel provided by the
22 other government.

23 “(d) PAYMENT OF PERSONNEL COSTS.—Each gov-
24 ernment shall pay the salary, per diem, cost of living, trav-
25 el, cost of language or other training, and other costs (ex-

1 cept for cost of temporary duty directed by the host gov-
2 ernment and costs incident to the use of host government
3 facilities in the performance of assigned duties) for its own
4 personnel in accordance with the laws and regulations of
5 such government that pertain to such matters.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of subchapter II of such chapter is
8 amended by adding at the end the following new item:

“2350k. Exchange of personnel.”.

9 **SEC. 3025. SCIENTIFIC INVESTIGATION AND RESEARCH**
10 **FOR THE NAVY.**

11 (a) REPEAL.—Section 7203 of title 10, United States
12 Code, is repealed.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 631 of such title is amended
15 by striking out the item relating to section 7203.

16 **SEC. 3026. CONSTRUCTION OF COMBATANT AND ESCORT**
17 **VESSELS AND ASSIGNMENT OF VESSEL**
18 **PROJECTS.**

19 (a) REPEAL OF OBSOLETE AND INTERNALLY INCON-
20 SISTENT PROVISIONS.—Section 7299a of title 10, United
21 States Code, is amended—

22 (1) by striking out subsection (a); and

23 (2) by redesignating subsections (b) and (c) as
24 subsections (a) and (b), respectively.

1 (b) CONFORMING AMENDMENT.—Subsection (b) of
 2 such section, as redesignated by subsection (a)(2), is
 3 amended in paragraph (2) by striking out “subsection (a)
 4 or”.

5 **SEC. 3027. REPEAL OF REQUIREMENT FOR CONSTRUCTION**
 6 **OF VESSELS ON PACIFIC COAST.**

7 (a) REPEAL.—Section 7302 of title 10, United States
 8 Code, is repealed.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 at the beginning of chapter 633 of such title is amended
 11 by striking out the item relating to section 7302.

12 **SEC. 3028. AUTHORITY TO TRANSFER BY GIFT A VESSEL**
 13 **STRICKEN FROM NAVAL VESSEL REGISTER.**

14 Section 7306(a)(1) of title 10, United States Code,
 15 is amended by inserting “Territory,” after “State,”.

16 **SEC. 3029. NAVAL SALVAGE FACILITIES.**

17 Chapter 637 of title 10, United States Code, is
 18 amended—

19 (1) in section 7361—

20 (A) in subsection (a), by inserting “AU-
 21 THORITY TO PROVIDE FACILITIES BY CON-
 22 TRACT OR OTHERWISE.—” after “(a)”;

23 (B) in subsection (b), by inserting “CON-
 24 TRACTS AFFECTING THE DEPARTMENT OF
 25 TRANSPORTATION.—” after “(b)”;

1 (C) by striking out subsection (c) and in-
2 serting in lieu thereof the following new sub-
3 section (c):

4 “(c) LIMITATION ON TERM CONTRACTS.—Term con-
5 tracts may be entered into for purposes of this section only
6 after—

7 “(1) it has been demonstrated to the satisfac-
8 tion of the Secretary of the Navy that available com-
9 mercial salvage facilities are inadequate to meet na-
10 tional defense requirements; and

11 “(2) the Secretary of the Navy determines that
12 adequate public notice of intent to exercise the au-
13 thority under this subsection has been provided.”;

14 (2) by designating the text of section 7362 as
15 subsection (d) and transferring such text, as so des-
16 ignated, to the end of section 7361 of title 10,
17 United States Code;

18 (3) in subsection (d) of section 7361 of such
19 title, as so designated and transferred, by inserting
20 before “The Secretary” the following: “COMMERCIAL
21 USE OF NAVAL VESSELS AND EQUIPMENT.—”;

22 (4) by designating the text of section 7363 as
23 subsection (e) and transferring such text, as so des-
24 ignated, to the end of section 7361 of title 10,
25 United States Code;

1 (5) in subsection (e) of section 7361 of such
2 title, as so designated and transferred, by inserting
3 before “Before any salvage vessel” the following:
4 “CONDITIONS FOR TRANSFER OF EQUIPMENT.—”;

5 (6) by designating the text of section 7365 as
6 subsection (f) and transferring such text, as so des-
7 ignated, to the end of section 7361 of title 10,
8 United States Code;

9 (7) in subsection (f) of section 7361 of such
10 title, as so designated and transferred, by inserting
11 before “The Secretary” the following: “SETTLE-
12 MENT OF CLAIMS.—”;

13 (8) by designating the text of section 7367 as
14 subsection (g) and transferring such text, as so des-
15 ignated, to the end of section 7361 of title 10,
16 United States Code;

17 (9) in subsection (g) of section 7361 of such
18 title, as so designated and transferred—

19 (A) by inserting before “Money received”
20 the following: “DISPOSITION OF RECEIPTS.—”;
21 and

22 (B) by striking out “this chapter” in the
23 first sentence and inserting in lieu thereof “this
24 section”;

1 (10) by striking out the section headings for
2 sections 7362, 7363, 7365, and 7367;

3 (11) by striking out the heading for section
4 7361 and inserting in lieu thereof the following:

5 **“§ 7361. Navy support for salvage operations”;**

6 and

7 (12) in the table of sections at the beginning of
8 such chapter—

9 (A) by striking out the item relating to
10 section 7361 and inserting in lieu thereof the
11 following:

“7361. Navy support for salvage operations.”;

12 and

13 (B) by striking out the items relating to
14 sections 7362, 7363, 7365, and 7367.

15 **Subtitle D—Department of Defense**
16 **Commercial and Industrial Ac-**
17 **tivities**

18 **SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.**

19 (a) CONSOLIDATION AND REVISION OF AUTHOR-
20 ITY.—

21 (1) AUTHORITY.—Subchapter V of chapter 148
22 of title 10, United States Code is amended by add-
23 ing at the end the following:

1 **“§ 2542. Factories and arsenals: manufacture at**

2 “(a) The Secretary of Defense or the Secretary of
3 a military department may have supplies needed for the
4 Department of Defense or such military department, as
5 the case may be, made in factories or arsenals owned by
6 the United States.

7 “(b) The Secretary of Defense or the Secretary of
8 the military department concerned may abolish any
9 United States arsenal that such Secretary considers un-
10 necessary.”.

11 (2) TECHNICAL AMENDMENT.—The table of
12 sections at the beginning of subchapter V of such
13 chapter is amended by adding at the end the follow-
14 ing new item:

“2542. Factories and arsenals: manufacture at.”.

15 (b) REPEAL OF SUPERSEDED AUTHORITY.—

16 (1) ARMY AUTHORITY.—

17 (A) REPEAL.—Section 4532 of title 10,
18 United States Code, is repealed.

19 (B) CLERICAL AMENDMENT.—The table of
20 sections at the beginning of chapter 433 of such
21 title is amended by striking out the item relat-
22 ing to section 4532.

23 (2) AIR FORCE AUTHORITY.—

24 (A) REPEAL.—Section 9532 of title 10,
25 United States Code, is repealed.

1 (B) CLERICAL AMENDMENT.—The table of
2 sections at the beginning of chapter 933 of such
3 title is amended by striking out the item relat-
4 ing to section 9532.

5 **SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED**
6 **ADVISORY AND ASSISTANCE SERVICES.**

7 (a) FUNDING TO BE IDENTIFIED IN BUDGET.—Sec-
8 tion 1105 of title 31, United States Code, is amended by
9 adding at the end the following new subsection:

10 “(g)(1) The Director of the Office of Management
11 and Budget shall establish the funding for advisory and
12 assistance services for each department and agency as a
13 separate object class in each budget annually submitted
14 to the Congress under this section.

15 “(2)(A) In paragraph (1), except as provided in sub-
16 paragraph (B), the term ‘advisory and assistance services’
17 means the following services when provided by nongovern-
18 mental sources:

19 “(i) Management and professional support serv-
20 ices.

21 “(ii) Studies, analyses, and evaluations.

22 “(iii) Engineering and technical services.

23 “(B) In paragraph (1), the term ‘advisory and assist-
24 ance services’ does not include the following services:

1 “(i) Routine automated data processing and
2 telecommunications services (as defined in the Fed-
3 eral Information Resources Management Regulation
4 prescribed by the Administrator of General Services)
5 unless such services are an integral part of a con-
6 tract for the procurement of advisory and assistance
7 services.

8 “(ii) Architectural and engineering services.

9 “(iii) Technical support of research and devel-
10 opment activities.

11 “(iv) Research on basic mathematics or medi-
12 cal, biological, physical, social, psychological, or
13 other phenomena.”.

14 (b) REPEAL OF SOURCE LAW.—Section 512 of Pub-
15 lic Law 102–394 (106 Stat. 1826) is repealed.

16 (c) REPEAL OF SUPERSEDED PROVISIONS.—

17 (1) TITLE 10.—

18 (A) REPEAL.—Section 2212 of title 10,
19 United States Code, is repealed.

20 (B) CLERICAL AMENDMENT.—The table of
21 sections at the beginning of chapter 131 of such
22 title is amended by striking out the item relat-
23 ing to section 2212.

24 (2) TITLE 31.—

1 (A) REPEAL.—Section 1114 of title 31,
2 United States Code, is repealed.

3 (B) CLERICAL AMENDMENT.—The table of
4 sections at the beginning of chapter 11 of such
5 title is amended by striking out the item relat-
6 ing to section 1114.

7 **Subtitle E—Fuel- and Energy-** 8 **Related Laws**

9 **SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS**
10 **FOR STORAGE, HANDLING, OR DISTRIBUTION.**
11 **TION.**

12 Section 2388(a) of title 10, United States Code, is
13 amended by striking out “liquid fuels and natural gas”
14 and inserting in lieu thereof “liquid fuels or natural gas”.

15 **Subtitle F—Fiscal Statutes**

16 **SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DE-**
17 **PARTMENT TO COVER OBLIGATIONS OF AN-**
18 **OTHER AGENCY OF DEPARTMENT OF DE-**
19 **FENSE.**

20 Subsection (c)(2) of section 3321 of title 31, United
21 States Code, is amended by striking out “military depart-
22 ments of the” and inserting in lieu thereof “The”.

1 **Subtitle G—Miscellaneous**

2 **SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.**

3 Section 2202 of title 10, United States Code, is
4 amended to read as follows:

5 **“§ 2202. Obligation of funds: limitation**

6 “The Secretary of Defense shall prescribe regulations
7 governing the performance within the Department of De-
8 fense of the procurement, production, warehousing, and
9 supply distribution functions, and related functions, of the
10 Department of Defense.”.

11 **SEC. 3082. REPEAL OF REQUIREMENTS REGARDING PROD-**
12 **UCT EVALUATION ACTIVITIES.**

13 (a) REPEAL.—Section 2369 of title 10, United States
14 Code, is repealed.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 139 of such title is amended
17 by striking out the item related to section 2369.

18 **SEC. 3083. CODIFICATION AND REVISION OF LIMITATION**
19 **ON LEASE OF VESSELS, AIRCRAFT, AND VEHI-**
20 **CLES.**

21 (a) LIMITATION.—

22 (1) IN GENERAL.—Chapter 141 of title 10,
23 United States Code, is amended by adding at the
24 end the following new section:

1 **“§ 2410l. Lease of vessels, aircraft, and vehicles**

2 “The head of an agency named in paragraph (1), (2),
3 (3), or (4) of section 2303(a) of this title may not enter
4 into any contract with a term of 18 months or more, or
5 extend or renew any contract for a term of 18 months
6 or more, for any vessel, aircraft, or vehicle, through a
7 lease, charter, or similar agreement without previously
8 having considered all costs of such lease (including esti-
9 mated termination liability) and determined in writing
10 that such lease is in the best interest of the Government.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions at the beginning of such chapter is amended
13 by adding at the end the following:

“2410l. Lease of vessels, aircraft, and vehicles.”.

14 (b) REPEAL OF SUPERSEDED PROVISION.—Section
15 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.
16 2401 note) is repealed.

17 **SEC. 3084. SOFT DRINK SUPPLIES FOR EXCHANGE STORES.**

18 Section 2424 of title 10, United States Code, is
19 amended by adding at the end the following new sub-
20 section:

21 “(c) Paragraphs (1) and (2) of subsection (b) do not
22 apply to contracts for the procurement of soft drinks that
23 are manufactured in the United States. The Secretary of
24 Defense shall prescribe in regulations the standards and
25 procedures for determining whether a particular drink is

1 a soft drink and whether the drink was manufactured in
2 the United States.”.

3 **SEC. 3085. REPEAL OF PREFERENCE FOR RECYCLED**
4 **TONER CARTRIDGES.**

5 The following provisions of law, relating to a pref-
6 erence for procurement of recycled toner cartridges, are
7 repealed:

8 (1) Section 630 of Public Law 102–393 (106
9 Stat. 1773) and the provision of law set out in
10 quotes in that section (42 U.S.C. 6962(j)).

11 (2) Section 401 of Public Law 103–123 (107
12 Stat. 1238).

13 ***TITLE IV—SIMPLIFIED ACQUISSI-***
14 ***TION THRESHOLD AND SO-***
15 ***CIOECONOMIC, SMALL BUSI-***
16 ***NESS, AND MISCELLANEOUS***
17 ***LAWS***

18 **Subtitle A—Simplified Acquisition**
19 **Threshold**

20 **PART I—ESTABLISHMENT OF THRESHOLD**

21 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.**

22 (a) TERM DEFINED.—Section 4(11) of the Office of
23 Federal Procurement Policy Act (41 U.S.C. 403(11)) is
24 amended to read as follows:

1 “(11) The term ‘simplified acquisition thresh-
2 old’ means \$100,000.”.

3 (b) INTERIM REPORTING RULE.—Until October 1,
4 1999, procuring activities shall continue to report procure-
5 ment awards with a dollar value of at least \$25,000, but
6 less than \$100,000, in conformity with the procedures for
7 the reporting of a contract award in excess of \$25,000
8 that were in effect on October 1, 1992.

9 **PART II—SIMPLIFICATION OF PROCEDURES**

10 **SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.**

11 The Office of Federal Procurement Policy Act (41
12 U.S.C. 401 et seq.) is amended by adding at the end the
13 following new section:

14 “SIMPLIFIED ACQUISITION PROCEDURES

15 “SEC. 29. (a) In order to promote efficiency and
16 economy in contracting and to avoid unnecessary burdens
17 for agencies and contractors, the Federal Acquisition Reg-
18 ulation shall provide for special simplified procedures for
19 contracts for acquisition of property and services that are
20 not in excess of the simplified acquisition threshold.

21 “(b) Regulations prescribed pursuant to subsection
22 (a) shall include the following provisions:

23 “(1) A provision that a contract with an antici-
24 pated value not in excess of \$2,500 is not subject to
25 section 15(j) of the Small Business Act (15 U.S.C.
26 644(j)) and section 2 of title III of the Act of March

1 3, 1933 (commonly known as the ‘Buy America
2 Act’) (41 U.S.C. 10a et seq.).

3 “(2) A provision that a civilian or military offi-
4 cial, or employee of an agency, whose contracting
5 authority does not exceed \$2,500 is not a procure-
6 ment official for the purposes of section 27 of this
7 Act.

8 “(3) A provision that a purchase not in excess
9 of \$2,500 may be made without obtaining competi-
10 tive quotations if the contracting officer determines
11 that the price for the purchase is reasonable.

12 “(4) A requirement that purchases not in ex-
13 cess of \$2,500 be distributed equitably among quali-
14 fied suppliers.

15 “(c) A proposed purchase or contract for an amount
16 above the simplified acquisition threshold may not be di-
17 vided into several purchases or contracts for lesser
18 amounts in order to use the simplified acquisition proce-
19 dures required by subsection (a).

20 “(d) In using simplified acquisition procedures, the
21 head of an executive agency shall promote competition to
22 the maximum extent practicable.”.

23 **SEC. 4012. SMALL BUSINESS RESERVATION.**

24 Section 15(j) of the Small Business Act (15 U.S.C.
25 644(j)) is amended to read as follows:

1 “(j)(1) Each contract for the purchase of goods and
2 services that has an anticipated value in excess of \$2,500
3 but not in excess of the simplified acquisition threshold
4 and that is subject to simplified acquisition procedures
5 prescribed pursuant to section 29 of the Office of Federal
6 Procurement Policy Act shall be reserved exclusively for
7 small business concerns unless the contracting officer is
8 unable to obtain offers from two or more small business
9 concerns that are competitive with market prices and are
10 competitive with regard to the quality and delivery of the
11 goods or services being purchased.

12 “(2) In carrying out paragraph (1), a contracting of-
13 ficer shall consider a responsive offer timely received from
14 an eligible small business offeror.

15 “(3) Nothing in paragraph (1) shall be construed as
16 precluding an award of a contract with a value not in ex-
17 cess of the simplified acquisition threshold under the au-
18 thority of section 8(a) of this Act, section 2323 of title
19 10, United States Code, or section 712 of the Business
20 Opportunity Development Reform Act of 1988 (Public
21 Law 100–656; 15 U.S.C. 644 note).”.

22 **SEC. 4013. FAST PAYMENT UNDER SIMPLIFIED ACQUI-**
23 **TION PROCEDURES.**

24 (a) PAYMENT PROCEDURES.—The simplified acquisi-
25 tion procedures described in section 29(a) of the Office

1 of Federal Procurement Policy Act (as added by section
2 4011) shall provide for use of the payment terms described
3 in subsection (b), and for the disbursement of payment
4 through electronic fund transfer, whenever circumstances
5 permit.

6 (b) REQUIRED PAYMENT TERMS.—The payment
7 terms for a purchase made pursuant to simplified acquisi-
8 tion procedures shall require payment, in accordance with
9 the provisions of chapter 39 of title 31, United States
10 Code, within 15 days after the date of the receipt of a
11 proper invoice for products delivered or services per-
12 formed, if—

13 (1) in the case of a purchase of property, title
14 to the property will vest in the Government upon de-
15 livery of the property to the Government or to a
16 common carrier; and

17 (2) in the case of property or services for which
18 payment is due before the Government's acceptance
19 of the property or services, the vendor provides com-
20 mercial or other appropriate warranties assuring
21 that the property or services purchased conform to
22 the requirements set forth in the Government's pur-
23 chase offer.

1 **SEC. 4014. PROCUREMENT NOTICE.**

2 (a) CONTINUATION OF EXISTING NOTICE THRESH-
3 OLDS.—Subsection (a) of section 18 of the Office of Fed-
4 eral Procurement Policy Act (41 U.S.C. 416) is amend-
5 ed—

6 (1) in paragraph (1), by striking out “the small
7 purchase threshold” each place it appears and in-
8 serting in lieu thereof “\$25,000”; and

9 (2) in paragraph (3)(B), by inserting after
10 “(B)” the following: “in the case of a contract or
11 order expected to exceed the simplified acquisition
12 threshold,”.

13 (b) CONTENT OF NOTICE.—Subsection (b) of such
14 section is amended—

15 (1) by striking out “and” at the end of para-
16 graph (4);

17 (2) by striking out the period at the end of
18 paragraph (5) and inserting in lieu thereof a semi-
19 colon; and

20 (3) by adding at the end the following:

21 “(6) in the case of a contract in an amount es-
22 timated to exceed \$25,000 but not to exceed the
23 simplified acquisition threshold—

24 “(A) a description of the procedures to be
25 used in awarding the contract; and

1 “(B) a statement specifying the periods for
2 prospective offerors and the contracting officer
3 to take the necessary preaward and award ac-
4 tions.”.

5 (c) NOTICE UNDER THE SMALL BUSINESS ACT.—

6 (1) CONTINUATION OF EXISTING NOTICE
7 THRESHOLDS.—Subsection (e) of section 8 of the
8 Small Business Act (15 U.S.C. 637) is amended—

9 (A) in paragraph (1), by striking out “the
10 small purchase threshold” each place it appears
11 and inserting in lieu thereof “\$25,000”; and

12 (B) in paragraph (3)(B), by inserting after
13 “(B)” the following: “in the case of a contract
14 or order estimated to exceed the simplified ac-
15 quisition threshold,”.

16 (2) CONTENT OF NOTICE.—Subsection (f) of
17 such section is amended—

18 (A) by striking out “and” at the end of
19 paragraph (4);

20 (B) by striking out the period at the end
21 of paragraph (5) and inserting in lieu thereof a
22 semicolon; and

23 (C) by adding at the end the following:

1 “(6) in the case of a contract in an amount es-
2 timated to exceed the \$25,000 but not to exceed the
3 simplified acquisition threshold—

4 “(A) a description of the procedures to be
5 used in awarding the contract; and

6 “(B) a statement specifying the periods for
7 prospective offerors and the contracting officer
8 to take the necessary preaward and award ac-
9 tions.”.

10 **SEC. 4015. ELECTRONIC COMMERCE FOR FEDERAL GOV-**
11 **ERNMENT PROCUREMENTS.**

12 (a) DEVELOPMENT AND IMPLEMENTATION OF SYS-
13 TEM.—The Administrator for Federal Procurement Pol-
14 icy, in consultation with the heads of appropriate Federal
15 Government agencies having applicable technical and
16 functional expertise, may take appropriate steps to develop
17 and implement a Federal Governmentwide architecture or
18 design for electronic commerce that provides interoper-
19 ability among users.

20 (b) REQUIRED CAPABILITIES.—The requirements
21 analysis prepared to implement the architecture or design
22 of a system of electronic commerce referred to in sub-
23 section (a) shall have the following capabilities:

24 (1) The maximum practicable capability for
25 electronic exchange of such procurement information

1 as solicitations, offers, contracts, purchase orders,
2 invoices, payments, and other contractual documents
3 between the private sector and the Federal Govern-
4 ment.

5 (2) Capabilities that increase the access of busi-
6 nesses, including small business concerns, socially
7 and economically disadvantaged small business con-
8 cerns, and businesses owned predominantly by
9 women, to Federal Government procurement oppor-
10 tunities.

11 (3) Easy access for potential Federal Govern-
12 ment contractors.

13 (4) Use of nationally and internationally recog-
14 nized data formats that broaden and ease electronic
15 interchange of data.

16 (5) Use of Federal Government systems and
17 networks and industry systems and networks.

18 (c) NOTICE AND SOLICITATION REGULATIONS.—In
19 connection with implementation of the architecture or de-
20 sign referred to in subsection (a), the Federal Acquisition
21 Regulatory Council shall ensure that the Federal Acquisi-
22 tion Regulation contains appropriate notice and solicita-
23 tion provisions applicable to acquisitions conducted
24 through such architecture or design. The provisions shall
25 specify the required form and content of notices of acquisi-

1 tions and the minimum periods for notifications and solici-
2 tations. Each minimum period specified for a notification
3 or solicitation shall afford potential offerors a reasonable
4 opportunity to respond to the notification or solicitation,
5 as the case may be.

6 (d) LIMITATION OF PUBLICATION REQUIREMENT.—
7 The requirement in section 18(a) of the Office of Federal
8 Procurement Policy Act (41 U.S.C. 416(a)) and section
9 8(e) of the Small Business Act (15 U.S.C. 637(e)) for
10 publishing notice of a solicitation in the Commerce Busi-
11 ness Daily shall not apply to acquisitions of a Federal
12 agency or a component of a Federal agency that are made
13 through electronic commerce and have a value not in ex-
14 cess of the simplified acquisition threshold if the Adminis-
15 trator for Federal Procurement Policy certifies that such
16 agency or component—

17 (1) has fully implemented the architecture or
18 design referred to in subsection (a); and

19 (2) has procedures in place—

20 (A) to provide notice to potential offerors
21 in accordance with the requirements of the Fed-
22 eral Acquisition Regulation prescribed pursuant
23 to subsection (c); and

24 (B) to ensure that small business concerns
25 are afforded an opportunity to respond to a so-

1 licitation of contract offers within the period
2 specified in the solicitation.

3 (e) DEFINITION.—In this section, the term “sim-
4 plified acquisition threshold” has the meaning given that
5 term is section 4(11) of the Office of Federal Procurement
6 Policy Act (41 U.S.C. 403(11)).

7 **PART III—APPLICABILITY OF LAWS TO ACQUI-**
8 **TIONS NOT IN EXCESS OF SIMPLIFIED AC-**
9 **QUISITION THRESHOLD**

10 **SEC. 4021. FUTURE ENACTED PROCUREMENT LAWS.**

11 The Office of Federal Procurement Policy Act (41
12 U.S.C. 401 et seq.), as amended by section 4011, is fur-
13 ther amended by adding at the end the following new sec-
14 tion:

15 “APPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT
16 EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

17 “SEC. 30. (a) IN GENERAL.—The applicability of a
18 provision of law described in subsection (b) to contracts
19 not in excess of the simplified acquisition threshold may
20 be waived on a class basis in the Federal Acquisition Reg-
21 ulation. Such a waiver shall not apply to a provision of
22 law that expressly refers to this section and prohibits the
23 waiver of that provision of law.

24 “(b) REFERENCED LAW.—A provision of law referred
25 to in subsection (a) is any provision of law enacted after
26 the date of the enactment of the Federal Acquisition

1 Streamlining Act of 1994 that, as determined by the Ad-
2 ministrator for Federal Procurement Policy, sets forth
3 policies, procedures, requirements, or restrictions for the
4 procurement of property or services by the Federal Gov-
5 ernment.”.

6 **SEC. 4022. ARMED SERVICES ACQUISITIONS.**

7 (a) REQUIREMENT FOR CONTRACT CLAUSE REGARD-
8 ING CONTINGENT FEES.—Section 2306(b) of title 10,
9 United States Code, is amended by adding at the end the
10 following: “This subsection does not apply to a contract
11 that is not in excess of the simplified acquisition thresh-
12 old.”.

13 (b) PROHIBITION ON LIMITING SUBCONTRACTOR DI-
14 RECT SALES TO THE UNITED STATES.—Section 2402 of
15 title 10, United States Code, is amended by adding at the
16 end the following new subsection:

17 “(c) This section does not apply to a contract that
18 is not in excess of the simplified acquisition threshold (as
19 defined in section 4(11) of the Office of Federal Procure-
20 ment Policy Act (41 U.S.C. 403(11))).”.

21 (c) AUTHORITY TO EXAMINE BOOKS AND RECORDS
22 OF CONTRACTORS.—Section 2313 of title 10, United
23 States Code, as amended by section 2201, is further
24 amended by adding at the end of subsection (f) the follow-
25 ing:

1 “(2) A contract that is not in excess of the sim-
2 plified acquisition threshold.”.

3 (d) REQUIREMENT TO IDENTIFY SUPPLIERS AND
4 SOURCES OF SUPPLIES.—Section 2384(b) of title 10,
5 United States Code, is amended by adding at the end the
6 following new paragraph:

7 “(3) The regulations prescribed pursuant to para-
8 graph (1) do not apply to a contract that does not exceed
9 the simplified acquisition threshold (as defined in section
10 4(11) of the Office of Federal Procurement Policy Act (41
11 U.S.C. 403(11))).”.

12 (e) PROHIBITION AGAINST DOING BUSINESS WITH
13 CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d)
14 of title 10, United States Code, is amended in the second
15 sentence by striking out “above” and all that follows and
16 inserting in lieu thereof “in excess of the simplified acqui-
17 sition threshold (as defined in section 4(11) of the Office
18 of Federal Procurement Policy Act (41 U.S.C.
19 403(11))).”.

20 (f) PROHIBITION ON PERSONS CONVICTED OF DE-
21 FENSE-CONTRACT RELATED FELONIES.—Section
22 2408(a) of title 10, United States Code, is amended by
23 adding at the end the following new paragraph:

24 “(4) The prohibition in paragraph (1) does not apply
25 with respect to the following:

1 “(A) A contract referred to in subparagraph
2 (A), (B), (C), or (D) of such paragraph that is not
3 in excess of the simplified acquisition threshold (as
4 defined in section 4(11) of the Office of Federal
5 Procurement Policy Act (41 U.S.C. 403 (11))).

6 “(B) A subcontract referred to in such subpara-
7 graph that is under a contract described in subpara-
8 graph (A).”.

9 **SEC. 4023. CIVILIAN AGENCY ACQUISITIONS.**

10 (a) REQUIREMENT FOR CONTRACT CLAUSE REGARD-
11 ING CONTINGENT FEES.—Section 304(a) of the Federal
12 Property and Administrative Services Act of 1949 (41
13 U.S.C. 254(a)) is amended by adding at the end the fol-
14 lowing: “The preceding sentence does not apply to a con-
15 tract that is not in excess of the simplified acquisition
16 threshold.”.

17 (b) PROHIBITION ON LIMITING SUBCONTRACTOR DI-
18 RECT SALES TO THE UNITED STATES.—Section 303G of
19 the Federal Property and Administrative Services Act of
20 1949 (41 U.S.C. 253g) is amended by adding at the end
21 the following new subsection:

22 “(c) This section does not apply to a contract that
23 is not in excess of the simplified acquisition threshold.”.

24 (c) AUTHORITY TO EXAMINE BOOKS AND RECORDS
25 OF CONTRACTORS.—Section 304B of the Federal Prop-

1 erty and Administrative Services Act of 1949, as added
2 by section 2251(a), is amended by adding at the end of
3 subsection (f) the following:

4 “(2) A contract that is not in excess of the sim-
5 plified acquisition threshold.”.

6 **SEC. 4024. ACQUISITIONS GENERALLY.**

7 (a) LIMITATION ON USE OF FUNDS TO INFLUENCE
8 CERTAIN FEDERAL ACTIONS.—Section 1352(e)(2)(B) of
9 title 31, United States Code, is amended by striking out
10 “\$100,000” and inserting in lieu thereof “the simplified
11 acquisition threshold (as defined in section 4(11) of the
12 Office of Federal Procurement Policy Act (41 U.S.C.
13 403(11)))”.

14 (b) REQUIREMENT FOR CONTRACT CLAUSE RELAT-
15 ING TO KICKBACKS.—Section 7 of the Anti-Kickback Act
16 of 1986 (41 U.S.C. 57) is amended by adding at the end
17 the following new subsection:

18 “(d) Subsections (a) and (b) do not apply to a prime
19 contract that is not in excess of the simplified acquisition
20 threshold (as defined in section 4(11) of the Office of Fed-
21 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

22 (c) MILLER ACT.—

23 (1) IN GENERAL.—

24 (A) CONTRACTS NOT EXCEEDING SIM-
25 PLIFIED ACQUISITION THRESHOLD.—The Act

1 of August 24, 1935 (40 U.S.C. 270a et seq.),
2 commonly referred to as the “Miller Act”, is
3 amended by adding at the end the following
4 new section:

5 “SEC. 5. This Act does not apply to a contract in
6 an amount that is not in excess of the simplified acquisi-
7 tion threshold (as defined in section 4(11) of the Office
8 of Federal Procurement Policy Act (41 U.S.C.
9 403(11))).”.

10 (B) CONFORMING AMENDMENT.—Sub-
11 section (a) of the first section of such Act is
12 amended by striking out “, exceeding \$25,000
13 in amount,”.

14 (2) ALTERNATIVE PAYMENT PROTECTIONS.—

15 (A) PROTECTIONS TO BE SPECIFIED IN
16 THE FAR.—The Federal Acquisition Regulation
17 shall provide alternatives to payment bonds as
18 payment protections for suppliers of labor and
19 materials under contracts referred to in sub-
20 paragraph (C).

21 (B) USE OF AUTHORIZED PROTECTIONS.—

22 The contracting officer for a contract shall—

23 (i) select, from among the payment
24 protections provided for in the Federal Ac-
25 quisition Regulation pursuant to subpara-

1 graph (A), one or more payment protec-
2 tions which the offeror awarded the con-
3 tract is to submit to the Federal Govern-
4 ment for the protection of suppliers of
5 labor and materials for such contract; and

6 (ii) specify in the solicitation of offers
7 for such contract the payment protection
8 or protections so selected.

9 (C) COVERED CONTRACTS.—

10 (i) APPLICABILITY.—The regulations
11 required under subparagraph (A) and the
12 requirements of subparagraph (B) apply
13 with respect to contracts referred to in
14 subsection (a) of the first section of the
15 Miller Act that are in excess of \$25,000
16 but not in excess of the simplified acquisi-
17 tion threshold (as defined in section 4(11)
18 of the Office of Federal Procurement Pol-
19 icy Act (41 U.S.C. 403(11))).

20 (ii) MILLER ACT REFERENCE.—The
21 Miller Act referred to in subparagraph (A)
22 is the Act of August 24, 1935 (40 U.S.C.
23 270a et seq.), commonly referred to as the
24 “Miller Act”.

1 (d) CONTRACT WORK HOURS AND SAFETY STAND-
2 ARDS ACT.—

3 (1) IN GENERAL.—Section 103 of the Contract
4 Work Hours and Safety Standards Act (40 U.S.C.
5 329) is amended by adding at the end the following
6 new subsection:

7 “(c) This title does not apply to a contract in an
8 amount that is not in excess of the simplified acquisition
9 threshold (as defined in section 4(11) of the Office of Fed-
10 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

11 (2) CONFORMING AMENDMENT.—Section
12 107(a) of such Act (40 U.S.C. 333(a)) is amended
13 by inserting after “It shall be a condition of each
14 contract” the following: “(other than a contract re-
15 ferred to in section 103(c))”.

16 (e) DRUG-FREE WORKPLACE ACT OF 1988.—Section
17 5152(a)(1) of the Drug-Free Workplace Act of 1988 (sub-
18 title D of title V of the Anti-Drug Abuse Act of 1988;
19 Public Law 100-690; 41 U.S.C. 701(a)(1)) is amended
20 by striking out “of \$25,000 or more from any Federal
21 agency” and inserting in lieu thereof “in excess of the sim-
22 plified acquisition threshold (as defined in section 4(11)
23 of such Act (41 U.S.C. 403(11))) by any Federal agency”.

24 (f) CERTAIN PROCUREMENT INTEGRITY REQUIRE-
25 MENTS.—

1 (1) CERTIFICATION REQUIREMENT.—Sub-
2 section (e)(7)(A) of section 27 of the Office of Fed-
3 eral Procurement Policy Act (41 U.S.C. 423) is
4 amended by striking out “\$100,000” and inserting
5 in lieu thereof “the simplified acquisition threshold”.

6 (2) CONTRACT CLAUSE REQUIREMENT.—Sub-
7 section (g)(1) of such section is amended by insert-
8 ing after “awarded by a Federal agency” the follow-
9 ing: “(other than a contract in an amount that is
10 not in excess of the simplified acquisition thresh-
11 old)”.

12 (g) SOLID WASTE DISPOSAL ACT.—Section 6002(a)
13 of the Solid Waste Disposal Act (42 U.S.C. 6962(a)) is
14 amended by striking out all that follows “with respect to
15 any” and inserting in lieu thereof “contract in excess of
16 the simplified acquisition threshold (as defined in section
17 4(11) of the Office of Federal Procurement Policy Act (41
18 U.S.C. 403(11)))”.

19 **PART IV—CONFORMING AMENDMENTS**

20 **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

21 (a) SIMPLIFIED ACQUISITION PROCEDURES.—Sec-
22 tion 2304(g) of title 10, United States Code, is amended—

23 (1) in paragraph (1), by striking out “small
24 purchases of property and services” and inserting in

1 lieu thereof “purchases of property and services not
2 in excess of the simplified acquisition threshold”;

3 (2) by striking out paragraph (2);

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

6 (4) in paragraph (2), as so redesignated—

7 (A) by striking out “small purchase
8 threshold” and inserting in lieu thereof “sim-
9 plified acquisition threshold”; and

10 (B) by striking out “small purchase proce-
11 dures” and inserting in lieu thereof “simplified
12 procedures”; and

13 (5) in paragraph (3), as redesignated by para-
14 graph (3), by striking out “small purchase proce-
15 dures” and inserting in lieu thereof “the simplified
16 procedures”.

17 (b) SOLICITATION CONTENT REQUIREMENT.—Sec-
18 tion 2305(a)(2) of title 10, United States Code, is amend-
19 ed by striking out “small purchases)” in the matter above
20 subparagraph (A) and inserting in lieu thereof “purchases
21 not in excess of the simplified acquisition threshold”.

22 (c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A)
23 of title 10, United States Code, is amended by striking
24 out “small purchase threshold” and inserting in lieu there-
25 of “simplified acquisition threshold”.

1 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

2 (a) SIMPLIFIED ACQUISITION PROCEDURES.—

3 (1) PROPERTY AND SERVICES GENERALLY.—

4 Section 303(g) of the Federal Property and Admin-
5 istrative Services Act of 1949 (41 U.S.C. 253(g)) is
6 amended—

7 (A) in paragraph (1), by striking out
8 “small purchases of property and services” and
9 inserting in lieu thereof “purchases of property
10 and services not in excess of the simplified ac-
11 quisition threshold”;

12 (B) by striking out paragraphs (2) and
13 (5);

14 (C) by redesignating paragraphs (3) and
15 (4) as paragraphs (2) and (3), respectively;

16 (D) in paragraph (2), as so redesignated—

17 (i) by striking out “small purchase
18 threshold” and inserting in lieu thereof
19 “simplified acquisition threshold”; and

20 (ii) by striking out “small purchase
21 procedures” and inserting in lieu thereof
22 “simplified procedures”; and

23 (E) in paragraph (3), as redesignated by
24 subparagraph (C), by striking out “small pur-
25 chase procedures” and inserting in lieu thereof
26 “the simplified procedures”.

1 (2) LEASEHOLDS.—Section 210 of the Federal
2 Property and Administrative Services Act of 1949
3 (40 U.S.C. 490) is amended by adding at the end
4 the following new subsection:

5 “(k)(1) Regulations prescribed by the Administrator
6 shall provide special simplified procedures for acquisitions
7 of leasehold interests in real property at rental rates that
8 do not exceed the simplified acquisition threshold.

9 “(2) For purposes of paragraph (1), the rental rate
10 or rates under a multiyear lease do not exceed the sim-
11 plified acquisition threshold if the average annual amount
12 of the rent payable for the period of the lease does not
13 exceed the simplified acquisition threshold.

14 “(3) In this subsection, the term ‘simplified acqui-
15 sition threshold’ has the meaning given that term in section
16 4(11) of the Office of Federal Procurement Policy Act (41
17 U.S.C. 403(11)).”.

18 (b) SOLICITATION CONTENT REQUIREMENT.—Sec-
19 tion 303A(b) of the Federal Property and Administrative
20 Services Act of 1949 (41 U.S.C. 253a(b)) is amended by
21 striking out “small purchases)” in the matter above para-
22 graph (1) and inserting in lieu thereof “purchases not in
23 excess of the simplified acquisition threshold)”.

24 (c) COST TYPE CONTRACTS.—Section 304(b) of the
25 Federal Property and Administrative Services Act of 1949

1 (41 U.S.C. 254(b)), as amended by section 1071, is fur-
2 ther amended in the second sentence by striking out “ei-
3 ther \$25,000” and inserting in lieu thereof “either the
4 simplified acquisition threshold”.

5 **SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY**
6 **ACT.**

7 Section 19(a) of the Office of Federal Procurement
8 Policy Act (41 U.S.C. 417(a)) is amended by striking out
9 “procurements, other than small purchases,” and insert-
10 ing in lieu thereof “procurements in excess of the sim-
11 plified acquisition threshold”.

12 **SEC. 4074. SMALL BUSINESS ACT.**

13 (a) DEFINITION.—Section 3(m) of the Small Busi-
14 ness Act (15 U.S.C. 632(m)) is amended by striking out
15 “‘small purchase threshold’” and inserting in lieu thereof
16 “‘simplified acquisition threshold’”.

17 (b) USE OF SIMPLIFIED ACQUISITION THRESHOLD
18 TERM.—Section 8(d)(2)(A) of the Small Business Act (15
19 U.S.C. 637(d)(2)(A)) is amended by striking out “small
20 purchase threshold” and inserting in lieu thereof “sim-
21 plified acquisition threshold”.

22 **PART V—REVISION OF REGULATIONS**

23 **SEC. 4081. REVISION REQUIRED.**

24 (a) FEDERAL ACQUISITION REGULATION.—The Fed-
25 eral Acquisition Regulatory Council established by section

1 25(a) of the Office of Federal Procurement Policy Act (41
2 U.S.C. 421(a)) shall review the Federal Acquisition Regu-
3 lation to identify regulations that are applicable to acquisi-
4 tions in excess of a specified amount that is less than
5 \$100,000. The Council shall amend the regulations so
6 identified as necessary to provide that such regulations do
7 not apply to acquisitions that are not in excess of the sim-
8 plified acquisition threshold. The preceding sentence does
9 not apply in the case of a regulation for which such an
10 amendment would not be in the national interest, as deter-
11 mined by the Council.

12 (b) SUPPLEMENTAL REGULATIONS.—The head of
13 each Federal agency that has issued regulations, policies,
14 or procedures referred to in section 25(c)(2) of the Office
15 of Federal Procurement Policy Act (41 U.S.C. 421(c)(2))
16 shall identify any such regulations, policies, or procedures
17 that are applicable to acquisitions in excess of a specified
18 amount that is less than \$100,000. The agency head shall
19 amend the regulations so identified as necessary to provide
20 that such regulations, policies, and procedures do not
21 apply to acquisitions that are not in excess of the sim-
22 plified acquisition threshold. The preceding sentence does
23 not apply in the case of a regulation, policy, or procedure
24 for which such an amendment would not be in the national
25 interest, as determined by the agency head.

1 (c) COMPLETION OF ACTIONS.—All actions under
2 this section shall be completed not later than 180 days
3 after the date of the enactment of this Act.

4 (d) DEFINITIONS.—In this section:

5 (1) The term “simplified acquisition threshold”
6 has the meaning given such term in section 4(11) of
7 the Office of Federal Procurement Policy Act (41
8 U.S.C. 403(11)), as amended by section 4001.

9 (2) The term “Federal agency” has the mean-
10 ing given such term in section 3(b) of the Federal
11 Property and Administrative Services Act of 1949
12 (41 U.S.C. 472(b)).

13 **Subtitle B—Socioeconomic and** 14 **Small Business Laws**

15 **SEC. 4101. ARMED SERVICES ACQUISITIONS.**

16 (a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO
17 CONSTRUCTION OF NAVAL VESSELS.—Section 7299 of
18 title 10, United States Code, is amended to read as fol-
19 lows: “No contract for the construction, alteration, fur-
20 nishing, or equipping of a naval vessel shall be subject to
21 the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly
22 referred to as the ‘Davis-Bacon Act’, or to the Service
23 Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the
24 President determines that such requirement is in the in-
25 terest of national defense.”.

1 (b) CLERICAL AMENDMENTS.—

2 (1) SECTION HEADING.—The heading of such
3 section is amended to read as follows:

4 **“§ 7299. Contracts: applicability of certain labor
5 laws”.**

6 (2) TABLE OF SECTIONS.—The item relating to
7 such section in the table of sections at the beginning
8 of chapter 633 of title 10, United States Code, is
9 amended to read as follows:

“7299. Contracts: applicability of certain labor laws.”.

10 **SEC. 4102. ACQUISITIONS GENERALLY.**

11 (a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO
12 CONSTRUCTION OF VESSELS.—No contract for the con-
13 struction, alteration, furnishing, or equipping of a vessel
14 shall be subject to the Act of March 3, 1931 (40 U.S.C.
15 276a(a)), commonly referred to as the ‘Davis-Bacon Act’,
16 or to the Service Contract Act of 1965 (41 U.S.C. 351
17 et seq.), unless the President determines that such re-
18 quirement is in the interest of the United States.

19 (b) REPEAL OF EXECUTED REPORTING REQUIRE-
20 MENT.—Section 306 of the Trade Agreements Act of 1979
21 (19 U.S.C. 2516) is repealed.

22 (c) WALSH-HEALEY ACT.—

23 (1) REPEAL OTHER THAN FOR CERTAIN DEFINI-
24 TIONAL PURPOSES.—The Act of June 30, 1936

1 (41 U.S.C. 35 et seq.), commonly referred to as the
2 “Walsh-Healey Act”, is amended to read as follows:

3 “SECTION 1. (a) The Secretary of Labor may pre-
4 scribe in regulations the standards for determining wheth-
5 er a contractor is a manufacturer of or a regular dealer
6 in materials, supplies, articles, or equipment to be manu-
7 factured or used in the performance of a contract entered
8 into by any executive department, independent establish-
9 ment, or other agency or instrumentality of the United
10 States, or by the District of Columbia, or by any corpora-
11 tion all the stock of which is beneficially owned by the
12 United States, for the manufacture or furnishing of mate-
13 rials, supplies, articles, and equipment.

14 “(b) Any interested person shall have the right of ju-
15 dicial review of any legal question regarding the interpre-
16 tation of the terms ‘regular dealer’ and ‘manufacturer’,
17 as defined pursuant to subsection (a).”

18 (2) CONFORMING AMENDMENT.—Section
19 2304(h) of title 10, United States Code, is amended
20 to read as follows:

21 “(h) For the purposes of the Act entitled ‘An Act
22 relating to the rate of wages for laborers and mechanics
23 employed on public buildings of the United States and the
24 District of Columbia by contractors and subcontractors,
25 and for other purposes’, approved March 3, 1931 (com-

1 monly referred to as the ‘Davis-Bacon Act’) (40 U.S.C.
2 276a et seq.), purchases or contracts awarded after using
3 procedures other than sealed-bid procedures shall be treat-
4 ed as if they were made with sealed-bid procedures.”.

5 (d) REPEAL OF REDUNDANT REQUIREMENT RE-
6 GARDING APPLICABILITY OF THE DAVIS-BACON ACT AND
7 THE WALSH-HEALEY ACT.—Section 308 of the Federal
8 Property and Administrative Services Act of 1949 (41
9 U.S.C. 258) is repealed.

10 **SEC. 4103. ACQUISITIONS FROM SMALL BUSINESSES.**

11 (a) SET-ASIDE PRIORITY.—Section 15 of the Small
12 Business Act (15 U.S.C. 644) is amended by striking out
13 subsections (e) and (f).

14 (b) CERTIFICATE OF COMPETENCE.—Section 804 of
15 Public Law 103–484 (106 Stat. 2447; 10 U.S.C. 2305
16 note) is repealed.

17 **SEC. 4104. CONTRACTING PROGRAM FOR CERTAIN SMALL**
18 **BUSINESS CONCERNS.**

19 (a) PROCUREMENT PROCEDURES AUTHORIZED.—
20 Section 8 of the Small Business Act (15 U.S.C. 637) is
21 amended by inserting after subsection (b) the following
22 new subsection:

23 “(c)(1) To facilitate the attainment of a goal for the
24 participation of small business concerns owned and con-
25 trolled by socially and economically disadvantaged individ-

1 uals that is established for a Federal agency pursuant to
2 section 15(g)(1), the head of the agency may enter into
3 contracts using—

4 “(A) less than full and open competition by re-
5 stricting the competition for such awards to small
6 business concerns owned and controlled by socially
7 and economically disadvantaged individuals de-
8 scribed in subsection (d)(3)(C) of this section; and

9 “(B) a price evaluation preference not in excess
10 of 10 percent when evaluating an offer received from
11 such a small business concern as the result of an un-
12 restricted solicitation.

13 “(2) Paragraph (1) does not apply to the Department
14 of Defense.”.

15 (b) IMPLEMENTATION THROUGH THE FEDERAL AC-
16 QUISSION REGULATION.—

17 (1) IN GENERAL.—The Federal Acquisition
18 Regulation shall be amended to provide for uniform
19 implementation of the authority provided in section
20 8(c) of the Small Business Act, as added by sub-
21 section (a).

22 (2) MATTERS TO BE ADDRESSED.—The provi-
23 sions of the Federal Acquisition Regulation pre-
24 scribed pursuant to paragraph (1) shall include—

1 (A) conditions for the use of advance pay-
2 ments;

3 (B) provisions for contract payment terms
4 that provide for—

5 (i) accelerated payment for work per-
6 formed during the period for contract per-
7 formance; and

8 (ii) full payment for work performed;

9 (C) guidance on how contracting officers
10 may use, in solicitations for various classes of
11 products or services, a price evaluation pref-
12 erence pursuant to section 8(c)(1)(B) of the
13 Small Business Act, as added by subsection (a),
14 to provide a reasonable advantage to small busi-
15 ness concerns owned and controlled by socially
16 and economically disadvantaged individuals
17 without effectively eliminating any participation
18 of other small business concerns; and

19 (D)(i) procedures for a person to request
20 the head of Federal agency to determine wheth-
21 er the use of competitions restricted to small
22 business concerns owned and controlled by so-
23 cially and economically disadvantaged individ-
24 uals at a contracting activity of such agency
25 has caused a particular industry category to

1 bear a disproportionate share of the contracts
2 awarded to attain the goal established for that
3 contracting activity; and

4 (ii) guidance for limiting the use of such
5 restricted competitions in the case of any con-
6 tracting activity and class of contracts deter-
7 mined in accordance with such procedures to
8 have caused a particular industry category to
9 bear a disproportionate share of the contracts
10 awarded to attain the goal established for that
11 contracting activity.

12 (c) TERMINATION.—Section 8(c) of the Small Busi-
13 ness Act, as added by subsection (a), shall cease to be
14 effective at the end of September 30, 1999.

15 **Subtitle C—Miscellaneous**

16 **Acquisition Laws**

17 **SEC. 4151. PROHIBITION ON USE OF FUNDS FOR DOCU-**
18 **MENTING ECONOMIC OR EMPLOYMENT IM-**
19 **PACT OF CERTAIN ACQUISITION PROGRAMS.**

20 (a) REVISION AND CODIFICATION.—

21 (1) IN GENERAL.—Subchapter I of chapter 134
22 of title 10, United States Code, is amended by add-
23 ing at the end the following new section:

1 **“§ 2247. Prohibition on use of funds for documenting**
2 **economic or employment impact of cer-**
3 **tain acquisition programs**

4 “No funds appropriated by the Congress may be obli-
5 gated or expended to assist any contractor of the Depart-
6 ment of Defense in preparing any material, report, lists,
7 or analysis with respect to the actual or projected eco-
8 nomic or employment impact in a particular State or con-
9 gressional district of an acquisition program for which all
10 research, development, testing, and evaluation has not
11 been completed.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of such subchapter is amend-
14 ed by adding at the end the following new item:

“2247. Prohibition on use of funds for documenting economic or employment
impact of certain acquisition programs.”.

15 (b) REPEAL OF SUPERSEDED LAW.—Section 9048 of
16 Public Law 102–396 (106 Stat. 1913) is repealed.

17 **SEC. 4152. RESTRICTION ON USE OF NONCOMPETITIVE**
18 **PROCEDURES FOR PROCUREMENT FROM A**
19 **PARTICULAR SOURCE.**

20 (a) ARMED SERVICES ACQUISITIONS.—Section 2304
21 of title 10, United States Code, as amended by section
22 1005(b), is further amended—

23 (1) in subsection (c)(5), by inserting “subject to
24 subsection (j),” after “(5)”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(j)(1) It is the policy of Congress that no legislation
4 should be enacted that requires a procurement to be made
5 from a specified non-Federal Government source.

6 “(2) A provision of law may not be construed as re-
7 quiring a procurement to be made from a specified non-
8 Federal Government source unless that provision of law—

9 “(A) specifically refers to this subsection;

10 “(B) specifically identifies the particular non-
11 Federal Government source involved; and

12 “(C) specifically states that the procurement
13 from that source is required by such provision of law
14 in contravention of the policy set forth in paragraph
15 (1).”.

16 (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303
17 of the Federal Property and Administrative Services Act
18 of 1949 (41 U.S.C. 253) is amended—

19 (1) in subsection (c)(5), by inserting “subject to
20 subsection (h),” after “(5)”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(h)(1) It is the policy of Congress that no legislation
24 should be enacted that requires a procurement to be made
25 from a specified non-Federal Government source.

1 “(2) A provision of law may not be construed as re-
 2 quiring a procurement to be made from a specified non-
 3 Federal Government source unless that provision of law—

4 “(A) specifically refers to this subsection;

5 “(B) specifically identifies the particular non-
 6 Federal Government source involved; and

7 “(C) specifically states that the procurement
 8 from that source is required by such provision of law
 9 in contravention of the policy set forth in paragraph
 10 (1).”.

11 **TITLE V—ACQUISITION**

12 **MANAGEMENT**

13 **Subtitle A—Armed Services**

14 **Acquisitions**

15 **SEC. 5001. PERFORMANCE BASED MANAGEMENT.**

16 (a) POLICY AND GOALS FOR PERFORMANCE BASED
 17 MANAGEMENT OF PROGRAMS.—

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

21 **“§ 2219. Performance based management: acquisition**
 22 **programs**

23 “(a) CONGRESSIONAL POLICY.—It is the policy of
 24 Congress that—

1 “(1) the Department of Defense should achieve,
2 on average, 90 percent of the cost and schedule
3 goals established for the research and development
4 programs and acquisition programs of the Depart-
5 ment of Defense without reducing the performance
6 or capabilities of the items being acquired; and

7 “(2) the average period necessary for converting
8 an emerging technology into initial operational capa-
9 bility for the Department of Defense should not ex-
10 ceed 8 years.

11 “(b) ESTABLISHMENT OF GOALS.—(1) The Sec-
12 retary of Defense shall approve or define the cost, per-
13 formance, and schedule goals for major defense acquisition
14 programs of the Department of Defense.

15 “(2) The Comptroller of the Department of Defense
16 shall evaluate the cost goals proposed for each major de-
17 fense acquisition program of the Department.

18 “(c) IDENTIFICATION OF NONCOMPLIANT PRO-
19 GRAMS.—Whenever it is necessary to do so in order to
20 implement the policy set out in subsection (a), the Sec-
21 retary of Defense shall—

22 “(1) identify and consider whether there is a
23 continuing need for programs that are significantly
24 behind schedule, over budget, or not in compliance

1 with performance or capability requirements taking
2 into consideration—

3 “(A) the needs of the Department known
4 as of the time of consideration;

5 “(B) the state of the technology or tech-
6 nologies relevant to the programs and to the
7 needs of the Department;

8 “(C) the estimated costs and projected
9 schedules necessary for the completion of such
10 programs; and

11 “(D) other pertinent information; and

12 “(2) identify existing and potential research
13 and development programs and acquisition programs
14 that are suitable alternatives for programs consid-
15 ered pursuant to paragraph (1).

16 “(d) ANNUAL REPORTING REQUIREMENT.—The Sec-
17 retary of Defense shall include in the annual report sub-
18 mitted to Congress pursuant to section 113(c) of this title
19 an assessment of the progress made in implementing the
20 policy stated in subsection (a). The Secretary shall use
21 data from existing management systems in making the as-
22 sessment.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of such chapter is amended
25 by adding at the end the following new item:

“2219. Performance based management: acquisition programs.”.

1 (b) ENHANCED SYSTEM OF PERFORMANCE INCEN-
2 TIVES.—Within one year after the date of the enactment
3 of this Act, the Secretary of Defense shall review the in-
4 centives and personnel actions available to the Secretary
5 for encouraging excellence in the defense acquisition
6 workforce and provide an enhanced system of incentives
7 for the encouragement of excellence in such workforce.
8 The enhanced system of incentives shall, to the maximum
9 extent consistent with applicable law—

10 (1) relate pay to performance (including the ex-
11 tent to which the performance of personnel in such
12 workforce contributes to achieving the cost goals,
13 schedule goals, and performance goals established
14 for acquisition programs of the department pursuant
15 to section 2219(b) of title 10, as added by sub-
16 section (a)); and

17 (2) provide for consideration, in personnel eval-
18 uations and promotion decisions, of the extent to
19 which the performance of personnel in such
20 workforce contributes to achieving the cost goals,
21 schedule goals, and performance goals established
22 for acquisition programs of the department pursuant
23 to section 2219(b) of title 10, United States Code,
24 as added by subsection (a).

1 (c) RECOMMENDED LEGISLATION.—Not later than
2 one year after the date of the enactment of this Act, the
3 Secretary of Defense shall submit to Congress any rec-
4 ommended legislation that the Secretary considers nec-
5 essary to carry out section 2219 of title 10, United States
6 Code, as added by subsection (a), and otherwise to facili-
7 tate and enhance management of Department of Defense
8 acquisition programs and the defense acquisition
9 workforce on the basis of performance.

10 **SEC. 5002. RESULTS ORIENTED ACQUISITION PROGRAM**
11 **CYCLE.**

12 The Secretary of Defense shall define in regulations
13 a simplified acquisition program cycle that is results-ori-
14 ented. The Secretary shall consider including in the regu-
15 lations provisions for the following:

16 (1) Program phases as follows:

17 (A) An integrated decision team meeting
18 which—

19 (i) may be requested by a potential
20 user of the system or component to be ac-
21 quired, the head of a laboratory, or a pro-
22 gram office on such bases as the emer-
23 gence of a new military requirement, cost
24 savings opportunity, or new technology op-
25 portunity;

1 (ii) is conducted by an acquisition
2 program executive officer; and

3 (iii) is usually completed within 1 to 3
4 months.

5 (B) A prototype development and testing
6 phase which—

7 (i) includes operational tests and con-
8 cerns relating to manufacturing operations
9 and life cycle support;

10 (ii) is usually completed within 6 to
11 36 months; and

12 (iii) produces sufficient numbers of
13 prototypes to assess operational utility.

14 (C) Product integration, development, and
15 testing which—

16 (i) includes full-scale development,
17 operational testing, and integration of
18 components; and

19 (ii) is usually completed within 1 to 5
20 years.

21 (D) Production, integration into existing
22 systems, or production and integration into ex-
23 isting systems.

1 (2) An acquisition program approval process for
2 major program decisions which consists of the fol-
3 lowing:

4 (A) One major decision point—

5 (i) which occurs for an acquisition
6 program before the program proceeds into
7 product integration and development; and

8 (ii) at which the Under Secretary of
9 Defense for Acquisition and Technology, in
10 consultation with the Vice Chairman of the
11 Joint Chiefs of Staff reviews the program,
12 determines whether the program should
13 continue to be carried out beyond product
14 integration and development, and decides
15 whether to commit to further development,
16 to require further prototyping, or to termi-
17 nate the program.

18 (B) Consideration of the potential benefits,
19 affordability, needs, and risks of an acquisition
20 program in the review of the acquisition pro-
21 gram.

22 **SEC. 5003. DEFENSE ACQUISITION PILOT PROGRAM DES-**
23 **IGNATIONS.**

24 (a) PROGRAMS AND WAIVERS.—The National De-
25 fense Authorization Act for Fiscal Year 1994 (Public Law

1 103–160) is amended by inserting the following new sec-
2 tion at the end of subtitle D of title VIII:

3 **“SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DES-**
4 **IGNATIONS.**

5 “(a) ELIGIBLE PROGRAMS.—The Secretary of De-
6 fense is authorized to designate the following defense ac-
7 quisition programs for participation in the defense acqui-
8 sition pilot program authorized by section 809 of the Na-
9 tional Defense Authorization Act for Fiscal Year 1991 (10
10 U.S.C. 2430 note):

11 “(1) Defense Personnel Support Center medi-
12 cal, clothing and textile, and subsistence programs
13 with respect to the following:

14 “(A) All contracts for processed fruits and
15 vegetables and frozen seafood items for both
16 depot stock and direct vendor delivery.

17 “(B) All contracts in the subsistence prime
18 vendor program for grocery items.

19 “(C) All contracts in the Mail Order Phar-
20 macy Program, the prime vendor programs for
21 pharmaceuticals and for medical surgical items
22 for delivery to military hospitals.

23 “(D) All contracts in the medical electronic
24 commerce program for acquisition for depot
25 stock and direct vendor delivery.

1 “(E) All contracts for the following items:
2 dress coats (small lots), dress coats, duffel
3 bags, Navy work clothing, general purpose
4 tents, suitcases, gloves for electrical workers,
5 boot flyers, socks, drawers, undershirts, and
6 items offered under the Broad Agency An-
7 nouncements for Clothing and Textiles Ad-
8 vanced Business Practices Demonstration Pro-
9 gram.

10 “(2) The Fire Support Combined Arms Tactical
11 Trainer program with respect to all contracts di-
12 rectly related to the procurement of a training sys-
13 tem (including related hardware, software, and sub-
14 systems) to perform collective training of field artil-
15 lery gunnery team components with development of
16 software as required to generate the training exer-
17 cises and component interfaces.

18 “(3) The Joint Direct Attack Munition pro-
19 gram (JDAM I) with respect to all contracts directly
20 related to the development and procurement of a
21 strap-on guidance kit, using an inertially guided,
22 Global Positioning System updated guidance kit for
23 inventory 1,000 and 2,000 pound bombs.

24 “(4) The Joint Primary Aircraft Training Sys-
25 tem (JPATS) with respect to all contracts directly

1 related to the acquisition of a new primary trainer
2 aircraft to fulfill Air Force and Navy joint under-
3 graduate aviation training requirements, and an as-
4 sociated ground-based training system consisting of
5 air crew training devices (simulators), courseware, a
6 Training Management System, and contractor sup-
7 port for the life of the system.

8 “(5) The Commercial Derivatives Aircraft pro-
9 gram with respect to all contracts directly related to
10 the acquisition or upgrading of civil-derivative air-
11 craft for use in (A) foreign military sales of Airborne
12 Warning and Control Systems to foreign govern-
13 ments with modifications of a type customarily pro-
14 vided to commercial customers, or (B) future Air
15 Force airlift and tanker requirements.

16 “(6) The Commercial Derivative Engine pro-
17 gram with respect to all contracts directly related to
18 the acquisition of (A) commercially derived engines
19 (including spare engines), logistics support equip-
20 ment, technical orders, management data, and initial
21 spare parts for use in the C-17A production line,
22 and (B) commercially derived engines to support the
23 purchase of commercial-derivative aircraft to meet
24 future Air Force airlift and tanker requirements, in-
25 cluding engine replacement and upgrades.

1 “(b) WAIVER AUTHORITY.—Subject to section 809(c)
2 of the National Defense Authorization Act for Fiscal Year
3 1991, the Secretary of Defense is authorized—

4 “(1) to apply any amendment or repeal of a
5 provision of law made in the Federal Acquisition
6 Streamlining Act of 1994 to the programs described
7 in subsection (a) before the effective date of such
8 amendment or repeal; and

9 “(2) to apply to a procurement of noncommer-
10 cial items under such programs—

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

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

18 before the effective date of such provision (or
19 amendment) to the extent that the Secretary deter-
20 mines necessary to test the application of such waiv-
21 er or exception to procurements of noncommercial
22 items.

23 “(c) PILOT PROGRAM IMPLEMENTATION.—In exer-
24 cising the authority provided in section 809 of the Na-
25 tional Defense Authorization Act for 1991, and in accord-

1 ance with sections 833 through 839 of this Act, the Sec-
2 retary of Defense, shall take the following actions:

3 “(1) MISSION-ORIENTED PROGRAM MANAGE-
4 MENT.—For one or more of the defense acquisition
5 programs designated for participation in the defense
6 acquisition pilot program, prescribe and implement
7 procedures which—

8 “(A) provide for interaction between the
9 program manager and the commander of the
10 operational command responsible for the re-
11 quirement for the equipment acquired;

12 “(B) include provisions for a determination
13 by the commander that items proposed for pro-
14 curement fulfill the need defined in approved
15 requirements documents; and

16 “(C) may include a role for the operational
17 commander in decision making for program
18 milestone decisions and performance of accept-
19 ance testing of items acquired.

20 “(2) SAVINGS OBJECTIVES.—Not later than 45
21 days after the date of enactment of the Federal Ac-
22 quisition Streamlining Act of 1994, identify for each
23 defense acquisition program participating in the
24 pilot program quantitative measures and goals for
25 reducing acquisition management costs.

1 “(3) PROGRAM PHASES.—For each defense ac-
2 quisition program participating in the pilot program,
3 incorporate in an approved acquisition strategy a
4 program review process that provides senior acquisi-
5 tion officials with reports that—

6 “(A) contain essential information on pro-
7 gram results at quarterly intervals;

8 “(B) reduce data requirements from the
9 current major program review reporting re-
10 quirements; and

11 “(C) include data on program costs esti-
12 mates, actual expenditures, performance esti-
13 mates, performance data from tests, and, con-
14 sistent with existing statutes, the minimum nec-
15 essary other data items required to ensure the
16 appropriate expenditure of funds appropriated
17 for that program.

18 “(4) PROGRAM WORK FORCE POLICIES.—With
19 regard to the review of incentives and personnel ac-
20 tions required under section 836 of this Act—

21 “(A) not later than 60 days after the date
22 of the enactment of the Federal Acquisition
23 Streamlining Act of 1994—

24 “(i) complete the review; and

1 “(ii) on the basis of the review, define
2 one or more systems that relate incentives,
3 including pay, to achievement of budgets,
4 schedules, and performance requirements;

5 “(B) not later than 120 days after the
6 date of the enactment of the Federal Acquisi-
7 tion Streamlining Act of 1994—

8 “(i) apply such a system of incentives
9 to not less than one defense acquisition
10 program participating in the pilot pro-
11 gram; and

12 “(ii) provide for an assessment of the
13 effectiveness of that system; and

14 “(C) incorporate the results of actions
15 taken pursuant to this paragraph into the de-
16 velopment of regulations for the implementation
17 of section 5001(b) of the Federal Acquisition
18 Streamlining Act of 1994.

19 “(5) EFFICIENT CONTRACTING PROCESS.—
20 Take any additional actions that the Secretary con-
21 siders necessary to waive regulations, not required
22 by statute, that affect the efficiency of the contract-
23 ing process, including, in the Secretary’s discretion,
24 defining alternative techniques to reduce reliance on
25 military specifications and standards in contracts for

1 the defense acquisition programs participating in the
2 pilot program.

3 “(6) CONTRACT ADMINISTRATION: PERFORM-
4 ANCE BASED CONTRACT MANAGEMENT.—For at
5 least one participating defense acquisition program
6 for which a determination is made to make pay-
7 ments for work in progress under the authority of
8 section 2307 of title 10, United States Code, define
9 payment milestones on the basis of quantitative
10 measures of results.

11 “(7) CONTRACTOR PERFORMANCE ASSESS-
12 MENT.—Collect and evaluate performance informa-
13 tion on each contract entered into for a defense ac-
14 quisition program participating in the pilot program,
15 including information on cost, schedule, and tech-
16 nical performance for each contractor supporting a
17 participating program.

18 “(d) APPLICABILITY.—(1) Subsection (b) applies
19 with respect to—

20 “(A) a contract that is awarded or modified
21 during the period described in paragraph (2); and

22 “(B) a contract that is awarded before the be-
23 ginning of such period and is to be performed (or
24 may be performed), in whole or in part, during such
25 period.

1 schedule goals established for the research and develop-
2 ment programs and acquisition programs of the agency
3 without reducing the performance or capabilities of the
4 items being acquired.

5 “(b) ESTABLISHMENT OF GOALS.—(1) The head of
6 each executive agency shall approve or define the cost, per-
7 formance, and schedule goals for major acquisition pro-
8 grams of the agency.

9 “(2) The chief financial officer of an executive agency
10 shall evaluate the cost goals proposed for each major de-
11 fense acquisition program of the agency.

12 “(c) IDENTIFICATION OF NONCOMPLIANT PRO-
13 GRAMS.—Whenever it is necessary to do so in order to
14 implement the policy set out in subsection (a), the head
15 of an executive agency shall—

16 “(1) identify and consider whether there is a
17 continuing need for programs that are significantly
18 behind schedule, over budget, or not in compliance
19 with performance or capability requirements taking
20 into consideration—

21 “(A) the needs of the agency known as of
22 the time of consideration;

23 “(B) the state of the technology or tech-
24 nologies relevant to the programs and to the
25 needs of the agency;

1 “(C) the estimated costs and projected
2 schedules necessary for the completion of such
3 programs; and

4 “(D) other pertinent information; and

5 “(2) identify existing and potential research
6 and development programs and acquisition programs
7 that are suitable alternatives for programs consid-
8 ered pursuant to paragraph (1).”.

9 (2) CLERICAL AMENDMENT.—The table of con-
10 tents in the first section of such Act, as amended by
11 sections 1552 and 1553, is further amended by in-
12 serting after the item relating to section 310 the fol-
13 lowing new item:

 “Sec. 311. Performance based management: acquisition programs.”.

14 (b) ANNUAL REPORTING REQUIREMENT.—Section 6
15 of the Office of Federal Procurement Policy Act (41
16 U.S.C. 405), as amended by section 1091, is further
17 amended by adding at the end the following new sub-
18 section:

19 “(k) The Administrator shall submit to Congress, on
20 an annual basis, an assessment of the progress made in
21 executive agencies in implementing the policy stated in
22 section 311(a) of the Federal Property and Administrative
23 Services Act of 1949. The Administrator shall use data
24 from existing management systems in making the assess-
25 ment.”.

1 (c) ENHANCED SYSTEM OF PERFORMANCE INCEN-
2 TIVES.—Within one year after the date of the enactment
3 of this Act, the Administrator for Federal Procurement
4 Policy, in consultation with appropriate officials in other
5 departments and agencies of the Federal Government,
6 shall, to the maximum extent consistent with applicable
7 law—

8 (1) establish policies and procedures for the
9 heads of such departments and agencies to designate
10 acquisition positions and manage employees (includ-
11 ing the accession, education, training and career de-
12 velopment of employees) in the designated acquisi-
13 tion positions;

14 (2) extend to the acquisition workforce of the
15 entire executive branch the acquisition workforce
16 policies contained in chapter 87 of title 10, United
17 States Code, relating to the acquisition workforce of
18 the Department of Defense; and

19 (3) review the incentives and personnel actions
20 available to the heads of department and agencies of
21 the Federal Government for encouraging excellence
22 in the acquisition workforce of the Federal Govern-
23 ment and provide an enhanced system of incentives
24 for the encouragement of excellence in such
25 workforce which—

1 (A) relates pay to performance (including
2 the extent to which the performance of person-
3 nel in such workforce contributes to achieving
4 the cost goals, schedule goals, and performance
5 goals established for acquisition programs pur-
6 suant to section 311(b) of the Federal Property
7 and Administrative Services Act of 1949, as
8 added by subsection (a)); and

9 (B) provides for consideration, in personnel
10 evaluations and promotion decisions, of the ex-
11 tent to which the performance of personnel in
12 such workforce contributes to achieving such
13 cost goals, schedule goals, and performance
14 goals.

15 (d) RECOMMENDED LEGISLATION.—Not later than
16 one year after the date of the enactment of this Act, the
17 Administrator for Federal Procurement Policy shall sub-
18 mit to Congress any recommended legislation that the Sec-
19 retary considers necessary to carry out section 311 of the
20 Federal Property and Administrative Services Act of
21 1949, as added by subsection (a), and otherwise to facili-
22 tate and enhance management of Federal Government ac-
23 quisition programs and the acquisition workforce of the
24 Federal Government on the basis of performance.

1 **SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.**

2 (a) DEVELOPMENT OF PROCESS REQUIRED.—The
3 Administrator for Federal Procurement Policy, in con-
4 sultation with the heads of appropriate Federal agencies,
5 shall develop a results-oriented acquisition process for im-
6 plementation by agencies in acquisitions of property and
7 services by the Federal agencies. The process shall include
8 the identification of quantitative measures and standards
9 for determining the extent to which an acquisition of non-
10 commercial items by a Federal agency satisfies the needs
11 for which the items are being acquired.

12 (b) INAPPLICABILITY OF PROCESS TO DEPARTMENT
13 OF DEFENSE.—The process developed pursuant to sub-
14 section (a) may not be applied to the Department of De-
15 fense.

16 **Subtitle C—Miscellaneous**

17 **SEC. 5091. CONTRACTOR EXCEPTIONAL PERFORMANCE**
18 **AWARDS.**

19 The Office of Federal Procurement Policy Act, as
20 amended by section 4021, is further amended by adding
21 at the end the following:

22 “CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS

23 “SEC. 31. (a) ESTABLISHMENT.—There is hereby es-
24 tablished an executive branch program to recognize and
25 promote exceptional contract performance by Federal Gov-
26 ernment contractors.

1 “(b) SELECTION.—(1) The Administrator shall en-
2 sure the establishment of criteria for selection of contrac-
3 tors to receive exceptional performance awards under the
4 program.

5 “(2) The head of an executive agency may select one
6 or more agency contractors to receive an exceptional per-
7 formance award under the program.

8 “(c) AWARD CEREMONY.—The Vice President, or the
9 head of the executive agency selecting a contractor for an
10 exceptional performance award, shall present the award
11 to the contractor with such ceremony as the Vice Presi-
12 dent or head of the agency, as the case may be, considers
13 appropriate.”.

14 **SEC. 5092. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**
15 **TELLECTUAL PROPERTY RIGHTS.**

16 Section 2386 of title 10, United States Code, is
17 amended by striking out paragraphs (3) and (4) and in-
18 serting in lieu thereof the following:

19 “(3) Technical data and computer software.

20 “(4) Releases for past infringement of patents
21 or copyrights or for unauthorized use of technical
22 data or computer software.”.

1 **TITLE VI—STANDARDS OF**
2 **CONDUCT**
3 **Subtitle A—Ethics Provisions**

4 **SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PRO-**
5 **CUREMENT POLICY ACT.**

6 (a) RECUSAL.—Subsection (c) of section 27 of the
7 Office of Federal Procurement Policy Act (41 U.S.C. 423)
8 is amended—

9 (1) in paragraph (1)—

10 (A) in the matter above subparagraph (A),
11 by inserting “only” after “subsection (b)(1)”;
12 and

13 (B) in subparagraph (A), by inserting
14 “(including the modification or extension of a
15 contract)” after “any procurement”;

16 (2) by striking out paragraphs (2) and (3) and
17 inserting in lieu thereof:

18 “(2) Whenever the head of a procuring activity ap-
19 proves a recusal under paragraph (1), a copy of the
20 recusal request and the approval of the request shall be
21 retained by such official for a period (not less than five
22 years) specified in regulations prescribed in accordance
23 with subsection (o).

24 “(3)(A) Except as provided in subparagraph (B), all
25 recusal requests and approvals of recusal requests pursu-

1 ant to this subsection shall be made available to the public
2 on request.

3 “(B) Any part of a recusal request or an approval
4 of a recusal request that is exempt from the disclosure
5 requirements of section 552 of title 5, United States Code,
6 under subsection (b)(1) of such section may be withheld
7 from disclosure to the public otherwise required under
8 subparagraph (A).”; and

9 (3) in paragraph (4), by striking out “compet-
10 ing contractor” and inserting in lieu thereof “per-
11 son”.

12 (b) APPLICABILITY OF CERTIFICATION REQUIRE-
13 MENT.—Subsection (e)(7)(A) of such section is amended
14 by adding at the end the following: “However, paragraph
15 (1)(B) does not apply with respect to a contract for less
16 than \$500,000.”.

17 (c) RESTRICTIONS RESULTING FROM PROCUREMENT
18 ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection
19 (f) of such section is amended—

20 (1) by redesignating paragraph (3) as para-
21 graph (4); and

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

24 “(1) No individual who, in the year prior to separa-
25 tion from service as an officer or employee of the Govern-

1 ment or an officer of the uniformed services in a covered
2 position, participated personally and substantially in ac-
3 quisition functions related to a contract, subcontract, or
4 claim of \$500,000 or more and—

5 “(A) engaged in repeated direct contact with
6 the contractor or subcontractor on matters relating
7 to such contract, subcontract, or claim; or

8 “(B) exercised significant ongoing decisionmak-
9 ing responsibility with respect to the contractor or
10 subcontractor on matters relating to such contract,
11 subcontract, or claim,

12 shall knowingly accept or continue employment with such
13 contractor or subcontractor for a period of 1 year follow-
14 ing the individual’s separation from service, except that
15 such individual may accept or continue employment with
16 any division or affiliate of such contractor or subcontrac-
17 tor that does not produce the same or similar products
18 as the entity involved in the negotiation or performance
19 of the contract or subcontract or the adjustment of the
20 claim.

21 “(2) No contractor or subcontractor, or any officer,
22 employee, agent, or consultant of such contractor or sub-
23 contractor shall knowingly offer, provide, or continue any
24 employment for another person, if such contractor, sub-
25 contractor, officer, employee, agent, or consultant knows

1 or should know that the acceptance of such employment
2 is or would be in violation of paragraph (1).

3 “(3) The head of each Federal agency shall designate
4 in writing as a ‘covered position’ under this section each
5 of the following positions in that agency:

6 “(A) The position of source selection authority,
7 member of a source selection evaluation board, or
8 chief of a financial or technical evaluation team, or
9 any other position, if the officer or employee in that
10 position is likely personally to exercise substantial
11 responsibility for ongoing discretionary functions in
12 the evaluation of proposals or the selection of a
13 source for a contract in excess of \$500,000.

14 “(B) The position of procuring contracting offi-
15 cer, or any other position, if the officer or employee
16 in that position is likely personally to exercise sub-
17 stantial responsibility for ongoing discretionary func-
18 tions in the negotiation of a contract in excess of
19 \$500,000 or the negotiation or settlement of a claim
20 in excess of \$500,000.

21 “(C) The position of program executive officer,
22 program manager, or deputy program manager, or
23 any other position, if the officer or employee in that
24 position is likely personally to exercise similar sub-
25 stantial responsibility for ongoing discretionary func-

1 tions in the management or administration of a con-
2 tract in excess of \$500,000.

3 “(D) The position of administrative contracting
4 officer, the position of an officer or employee as-
5 signed on a permanent basis to a Government Plant
6 Representative’s Office, the position of auditor, a
7 quality assurance position, or any other position, if
8 the officer or employee in that position is likely per-
9 sonally to exercise substantial responsibility for on-
10 going discretionary functions in the on-site oversight
11 of a contractor’s operations with respect to a con-
12 tract in excess of \$500,000.

13 “(E) A position in which the incumbent is likely
14 personally to exercise substantial responsibility for
15 ongoing discretionary functions in operational or de-
16 velopmental testing activities involving repeated di-
17 rect contact with a contractor regarding a contract
18 in excess of \$500,000.”.

19 (d) DISCLOSURE OF PROPRIETARY OR SOURCE SE-
20 LECTION INFORMATION TO UNAUTHORIZED PERSONS.—
21 Subsection (l) of such section is amended—

22 (1) by inserting “who are likely to be involved
23 in contracts, modifications, or extensions in excess of
24 \$25,000” in the first sentence after “its procure-
25 ment officials”; and

1 (2) by striking out “(e)” each place it appears
2 and inserting in each such place “(f)”.

3 (e) RULES OF CONSTRUCTION.—Subsection (n) of
4 such section is amended to read as follows:

5 “(n) RULES OF CONSTRUCTION.—Nothing in this
6 section shall be construed to—

7 “(1) authorize the withholding of any informa-
8 tion from the Congress, any committee or sub-
9 committee thereof, a Federal agency, any board of
10 contract appeals of a Federal agency, the Comptrol-
11 ler General, or an inspector general of a Federal
12 agency;

13 “(2) restrict the disclosure of information to, or
14 receipt of information by, any person or class of per-
15 sons authorized, in accordance with applicable agen-
16 cy regulations or procedures, to receive that infor-
17 mation;

18 “(3) restrict a contractor from disclosing its
19 own proprietary information or the recipient of in-
20 formation so disclosed by a contractor from receiving
21 such information; or

22 “(4) restrict the disclosure or receipt of infor-
23 mation relating to a Federal agency procurement
24 that has been canceled by the agency and that the

1 contracting officer concerned determines in writing
2 is not likely to be resumed.”.

3 (f) TERM TO BE DEFINED IN REGULATIONS.—Sub-
4 section (o)(2)(A) of such section is amended—

5 (1) by inserting “money, gratuity, or other” be-
6 fore “thing of value”; and

7 (2) by inserting before the semicolon “and such
8 other exceptions as may be adopted on a Govern-
9 mentwide basis under section 7353 of title 5, United
10 States Code”.

11 (g) TERMS DEFINED IN LAW.—Subsection (p) of
12 such section is amended—

13 (1) in paragraph (1) by striking out “clauses
14 (i)–(viii)” and inserting in lieu thereof “clauses (i)
15 through (vii)”;

16 (2) in paragraph (3)—

17 (A) in subparagraph (A)—

18 (i) by striking out clause (i);

19 (ii) by redesignating clauses (ii), (iii),
20 (iv), (v), (vi), (vii), and (viii) as clauses (i),
21 (ii), (iii), (iv), (v), (vi), and (vii), respec-
22 tively; and

23 (iii) in clause (i) (as redesignated by
24 subclause (II) of this clause), by striking
25 out “review and approval of a specifica-

1 tion” and inserting in lieu thereof “ap-
2 proval or issuance of a specification, acqui-
3 sition plan, procurement request, or req-
4 uisition”; and

5 (B) in subparagraph (B), by striking out
6 all after “includes” and inserting in lieu thereof
7 the following: “any individual acting on behalf
8 of, or providing advice to, the agency with re-
9 spect to any phase of the agency procurement
10 concerned, regardless of whether such individ-
11 ual is a consultant, expert, or adviser, or an of-
12 ficer or employee of a contractor or subcontrac-
13 tor (other than a competing contractor).”; and

14 (3) in paragraph (6)(A), by inserting
15 “nonpublic” before “information”.

16 **SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES**
17 **CODE.**

18 Section 208(a) of title 18, United States Code, is
19 amended—

20 (1) by inserting “(1)” before “Except as per-
21 mitted”; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(2) Whoever knowingly aids, abets, counsels, com-
25 mands, induces, or procures conduct prohibited by this

1 section shall be subject to the penalties set forth in section
2 216 of this title.”.

3 **SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

4 (a) REPEAL.—The following provisions of law are re-
5 pealed:

6 (1) Sections 2207, 2397, 2397a, 2397b, and
7 2397c of title 10, United States Code.

8 (2) Section 281 of title 18, United States Code.

9 (3) Section 801 of title 37, United States Code.

10 (4) Part A of title VI of the Department of En-
11 ergy Organization Act (42 U.S.C. 7211 through
12 7218).

13 (b) CLERICAL AMENDMENTS.—

14 (1) TITLE 10.—Part IV of subtitle A of title 10,
15 United States Code, is amended—

16 (A) in the table of sections at the begin-
17 ning of chapter 131, by striking out the item
18 relating to section 2207; and

19 (B) in the table of sections for chapter
20 141, by striking out the items relating to sec-
21 tions 2397, 2397a, 2397b, and 2397c.

22 (2) TITLE 18.—The table of sections for chap-
23 ter 15 of title 18, United States Code, is amended
24 by striking out the item relating to section 281.

1 (3) TITLE 37.—The table of sections for chap-
2 ter 15 of title 37, United States Code, is amended
3 by striking out the item relating to section 801.

4 (4) DEPARTMENT OF ENERGY ORGANIZATION
5 ACT.—The table of contents for the Department of
6 Energy Organization Act is amended by striking out
7 the matter relating to part A of title VI.

8 **SEC. 6004. IMPLEMENTATION.**

9 (a) REGULATIONS.—Not later than 180 days after
10 the date of the enactment of this Act, regulations imple-
11 menting the amendments made by section 6001 to section
12 27 of the Office of Federal Procurement Policy Act (41
13 U.S.C. 423), including definitions of the terms used in
14 subsection (f) of such section, shall be issued in accord-
15 ance with sections 6 and 25 of such Act (41 U.S.C. 405
16 and 521) after coordination with the Director of the Office
17 of Government Ethics.

18 (b) SAVINGS PROVISIONS.—

19 (1) CONTRACTOR CERTIFICATIONS.—No officer,
20 employee, agent, representative, or consultant of a
21 contractor who has signed a certification under sec-
22 tion 27(e)(1)(B) of the Office of Federal Procure-
23 ment Policy Act (41 U.S.C. 423(e)(1)(B)) before the
24 effective date of this Act shall be required to sign a

1 new certification as a result of the enactment of this
2 Act.

3 (2) FEDERAL PROCUREMENT OFFICIAL CER-
4 TIFICATIONS.—No procurement official of a Federal
5 agency who has signed a certification under section
6 27(l) of the Office of Federal Procurement Policy
7 Act (41 U.S.C. 423(l)) before the date of enactment
8 of this Act shall be required to sign a new certifi-
9 cation as a result of the enactment of this Act.

10 (c) INSPECTOR GENERAL REPORTS.—Not later than
11 May 31 of each of the years 1995 through 1998, the In-
12 spector General of each Federal agency (or, in the case
13 of a Federal agency that does not have an Inspector Gen-
14 eral, the head of such agency) shall submit to Congress
15 a report on the compliance by the agency during the pre-
16 ceding year with the requirement for the head of the agen-
17 cy to designate covered procurement positions under sec-
18 tion 27(f)(3) of the Office of Federal Procurement Policy
19 Act (as added by section 6001(c)).

20 **Subtitle B—Additional** 21 **Amendments**

22 **SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FED-** 23 **ERAL PERSONNEL.**

24 (a) AMENDMENT OF OFPP ACT.—The Office of Fed-
25 eral Procurement Policy Act, as amended by section 1092,

1 is further amended by inserting after section 22 the fol-
2 lowing new section 23:

3 “CONTRACTING FUNCTIONS PERFORMED BY FEDERAL
4 PERSONNEL

5 “SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVI-
6 SORY AND ASSISTANCE SERVICES.—(1) No person who is
7 not a person described in subsection (b) may be paid by
8 an agency for services to conduct evaluations or analyses
9 of any aspect of a proposal submitted for an acquisition
10 unless personnel described in subsection (b) with adequate
11 training and capabilities to perform such evaluations and
12 analyses are not readily available within the agency or an-
13 other Federal agency, as determined in accordance with
14 standards and procedures prescribed in the Federal Acqui-
15 sition Regulation.

16 “(2) In the administration of this subsection, the
17 head of each agency shall determine in accordance with
18 the standards and procedures set forth in the Federal Ac-
19 quisition Regulation whether—

20 “(A) a sufficient number of personnel described
21 in subsection (b) within the agency or another Fed-
22 eral agency are readily available to perform a par-
23 ticular evaluation or analysis for the agency head
24 making the determination; and

1 “(B) the readily available personnel have the
2 training and capabilities necessary to perform the
3 evaluation or analysis.

4 “(b) COVERED PERSONNEL.—For purposes of sub-
5 section (a), the personnel described in this subsection are
6 as follows:

7 “(1) An employee, as defined in section 2105 of
8 title 5, United States Code.

9 “(2) A member of the Armed Forces of the
10 United States.

11 “(3) A person assigned to a Federal agency
12 pursuant to subchapter VI of chapter 33 of title 5,
13 United States Code.

14 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion is intended to affect the relationship between the Fed-
16 eral Government and a federally funded research and de-
17 velopment center.”.

18 (b) REQUIREMENT FOR GUIDANCE AND REGULA-
19 TIONS.—Not later than 90 days after the date of the en-
20 actment of this Act, the Federal Acquisition Regulatory
21 Council established by section 25(a) of the Office of Fed-
22 eral Procurement Policy Act (41 U.S.C. 421(a)) shall—

23 (1) review part 37 of title 48 of the Code of
24 Federal Regulations as it relates to the use of advi-
25 sory and assistance services; and

1 (2) provide guidance and promulgate regula-
2 tions regarding—

3 (A) what actions Federal agencies are re-
4 quired to take to determine whether expertise is
5 readily available within the Federal Government
6 before contracting for advisory and technical
7 services to conduct acquisitions; and

8 (B) the manner in which personnel with
9 expertise may be shared with agencies needing
10 expertise for such acquisitions.

11 **SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR**
12 **STUDY AND REPORT.**

13 Section 17 of the Office of Federal Procurement Pol-
14 icy Act (41 U.S.C. 415) is repealed.

15 **SEC. 6053. INTERESTS OF MEMBERS OF CONGRESS.**

16 Section 3741 of the Revised Statutes (41 U.S.C. 22)
17 is amended to read as follows:

18 “No member of Congress shall be admitted to any
19 share or part of any contract or agreement made, entered
20 into, or accepted by or on behalf of the United States,
21 or to any benefit to arise thereupon.”.

22 **SEC. 6054. WAITING PERIOD FOR SIGNIFICANT CHANGES**
23 **PROPOSED FOR ACQUISITION REGULATIONS.**

24 Section 22(a) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 418b) is amended—

1 (1) by striking out “30 days” and inserting in
2 lieu thereof “60 days”; and

3 (2) by adding at the end the following: “Not-
4 withstanding the preceding sentence, such a policy,
5 regulation, procedure, or form may take effect ear-
6 lier than 60 days after the publication date when
7 there are compelling circumstances for the earlier
8 effective date, but in no event may that effective
9 date be less than 30 days after the publication
10 date.”.

11 **Subtitle C—Whistleblower** 12 **Protection**

13 **SEC. 6101. ARMED SERVICES PROCUREMENTS.**

14 (a) WHISTLEBLOWER PROTECTIONS FOR CONTRAC-
15 TOR EMPLOYEES.—Section 2409 of title 10, United
16 States Code, is amended—

17 (1) by striking out subsection (d);

18 (2) by redesignating subsection (c) as sub-
19 section (d); and

20 (3) by inserting after subsection (b) the follow-
21 ing new subsection (c):

22 “(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1)
23 If the Secretary of Defense determines that a defense con-
24 tractor has subjected a person to a reprisal prohibited by

1 subsection (a), the Secretary may take one or more of the
2 following actions:

3 “(A) Order the defense contractor to take af-
4 firmative action to abate the reprisal.

5 “(B) Order the defense contractor to reinstate
6 the person to the position that the person held be-
7 fore the reprisal, together with the compensation (in-
8 cluding back pay), employment benefits, and other
9 terms and conditions of employment that would
10 apply to the person in that position if the reprisal
11 had not been taken.

12 “(C) Order the defense contractor to pay the
13 complainant an amount equal to the aggregate
14 amount of all costs and expenses (including attor-
15 ney’s fees and expert witnesses’ fees) that were rea-
16 sonably incurred by the complainant for, or in con-
17 nection with, bringing the complaint regarding the
18 reprisal, as determined by the Secretary.

19 “(2) Whenever a person fails to comply with an order
20 issued under paragraph (1), the Secretary shall file an ac-
21 tion for enforcement of such order in the United States
22 district court for a district in which the reprisal was found
23 to have occurred. In any action brought under this para-
24 graph, the court may grant appropriate relief, including

1 injunctive relief and compensatory and exemplary dam-
2 ages.

3 “(3) Any person adversely affected or aggrieved by
4 an order issued under paragraph (1) may obtain review
5 of the order’s conformance with this subsection, and any
6 regulations issued to carry out this section, in the United
7 States court of appeals for a circuit in which the reprisal
8 is alleged in the order to have occurred. No petition seek-
9 ing such review may be filed more than 60 days after issu-
10 ance of the Secretary’s order. Review shall conform to
11 chapter 7 of title 5.”.

12 (b) RELATED LAW.—

13 (1) REPEAL.—Section 2409a of title 10, United
14 States Code, is repealed.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions at the beginning of chapter 141 of such title
17 is amended by striking out the item relating to sec-
18 tion 2409a.

19 **SEC. 6102. GOVERNMENTWIDE WHISTLEBLOWER PROTEC-**
20 **TIONS FOR CONTRACTOR EMPLOYEES.**

21 The Office of Federal Procurement Policy Act (41
22 U.S.C. 401 et seq.), as amended by section 5091, is fur-
23 ther amended by adding at the end the following new sec-
24 tion:

1 “CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL
2 FOR DISCLOSURE OF CERTAIN INFORMATION

3 “SEC. 32. (a) PROHIBITION OF REPRISALS.—An em-
4 ployee of an executive agency contractor may not be dis-
5 charged, demoted, or otherwise discriminated against as
6 a reprisal for disclosing to a Member of Congress or an
7 authorized official of the agency or the Department of
8 Justice information relating to a substantial violation of
9 law related to an agency contract (including the competi-
10 tion for or negotiation of an agency contract).

11 “(b) INVESTIGATION OF COMPLAINTS.—A person
12 who believes that the person has been subjected to a re-
13 prisal prohibited by subsection (a) may submit a complaint
14 to the Inspector General of the executive agency. Unless
15 the Inspector General determines that the complaint is
16 frivolous, the Inspector General shall investigate the com-
17 plaint and, upon completion of such investigation, submit
18 a report of the findings of the investigation to the person,
19 the contractor concerned, and the head of the agency. In
20 the case of an executive agency that does not have an in-
21 spector general, the duties of the inspector general under
22 this section shall be performed by an official designated
23 by the agency head.

24 “(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1)
25 If the head of an executive agency determines that an

1 agency contractor has subjected a person to a reprisal pro-
2 hibited by subsection (a), the agency head may take one
3 or more of the following actions:

4 “(A) Order the contractor to take affirmative
5 action to abate the reprisal.

6 “(B) Order the contractor to reinstate the per-
7 son to the position that the person held before the
8 reprisal, together with the compensation (including
9 back pay), employment benefits, and other terms
10 and conditions of employment that would apply to
11 the person in that position if the reprisal had not
12 been taken.

13 “(C) Order the contractor to pay the complain-
14 ant an amount equal to the aggregate amount of all
15 costs and expenses (including attorney’s fees and ex-
16 pert witnesses’ fees) that were reasonably incurred
17 by the complainant for, or in connection with, bring-
18 ing the complaint regarding the reprisal, as deter-
19 mined by the Secretary.

20 “(2) Whenever a person fails to comply with an order
21 issued under paragraph (1), the agency head shall file an
22 action for enforcement of such order in the United States
23 district court for a district in which the reprisal was found
24 to have occurred. In any action brought under this para-
25 graph, the court may grant appropriate relief, including

1 injunctive relief and compensatory and exemplary dam-
2 ages.

3 “(3) Any person adversely affected or aggrieved by
4 an order issued under paragraph (1) may obtain review
5 of the order’s conformance with this subsection, and any
6 regulations issued to carry out this section, in the United
7 States court of appeals for a circuit in which the reprisal
8 is alleged in the order to have occurred. No petition seek-
9 ing such review may be filed more than 60 days after issu-
10 ance of the agency head’s order. Review shall conform to
11 chapter 7 of title 5, United States Code.

12 “(d) CONSTRUCTION.—Nothing in this section may
13 be construed to authorize the discharge of, demotion of,
14 or discrimination against an employee for a disclosure
15 other than a disclosure protected by subsection (a) or to
16 modify or derogate from a right or remedy otherwise avail-
17 able to the employee.

18 “(e) COORDINATION WITH OTHER LAW.—This sec-
19 tion does not apply with respect to the Department of De-
20 fense. For the corresponding provision of law applicable
21 to the Department of Defense, see section 2409 of title
22 10, United States Code.

23 “(f) DEFINITION.—In this section, the term ‘Inspec-
24 tor General’ means an Inspector General appointed under
25 the Inspector General Act of 1978.”.

1 **TITLE VII—DEFENSE TRADE AND**
2 **COOPERATION**

3 **SEC. 7001. PURCHASES OF FOREIGN GOODS.**

4 (a) REPEAL OF EXECUTED REQUIREMENTS.—

5 (1) REQUIREMENT FOR POLICY GUIDANCE.—

6 Title III of the Act of March 3, 1933 (41 U.S.C.
7 10a et seq.), commonly referred to as the “Buy
8 American Act”, is amended in section 4(g) (41
9 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C)
10 and (3).

11 (2) REPORTING REQUIREMENT.—Section
12 9096(b) of Public Law 102–396 (106 Stat. 1924; 41
13 U.S.C. 10b–2(b)) is repealed.

14 (b) REPEAL OF REDUNDANT PROVISION.—

15 (1) CONSIDERATION OF NATIONAL SECURITY
16 OBJECTIVES.—Section 2327 of title 10, United
17 States Code, is repealed.

18 (2) CLERICAL AMENDMENT.—The table of sec-
19 tions at the beginning of chapter 137 of such title
20 is amended by striking out the item relating to sec-
21 tion 2327.

22 **SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.**

23 (a) TERMINOLOGY REVISIONS.—Section 2531 of title
24 10, United States Code, is amended—

1 (1) in the subsection captions for subsections
2 (a) and (c), by striking out “MOUS AND RELATED”
3 and inserting in lieu thereof “INTERNATIONAL”;

4 (2) in subsection (a), by striking out “proposed
5 memorandum of understanding, or any existing or
6 proposed agreement related to a memorandum of
7 understanding,” in the matter above paragraph (1)
8 and inserting in lieu thereof “proposed international
9 agreement, including a memorandum of understand-
10 ing,”;

11 (3) by striking out “memorandum of under-
12 standing or related agreement” each place it appears
13 and inserting in lieu thereof “international agree-
14 ment”;

15 (4) in subsection (b), by striking out “memo-
16 randum or related agreement” each place it appears
17 in the second sentence and inserting in lieu thereof
18 “international agreement”; and

19 (5) in subsection (c)—

20 (A) by striking out “A” after “AGREE-
21 MENTS.—” and inserting in lieu thereof “An”;
22 and

23 (B) by striking out “memorandum or
24 agreement” and inserting in lieu thereof “inter-
25 national agreement”.

1 (b) EXPANDED SCOPE OF AGREEMENTS.—Section
2 2531(a) of title 10, United States Code, is amended by
3 striking out “research, development, or production” in the
4 matter above paragraph (1) and inserting in lieu thereof
5 “research, development, production, or logistics support”.

6 (c) CLERICAL AMENDMENTS.—

7 (1) SECTION HEADING.—The heading of section
8 2531 of title 10, United States Code, is amended to
9 read as follows:

10 **“§ 2531. Defense international agreements”.**

11 (2) TABLE OF SECTIONS.—The item relating to
12 such section in the table of sections at the beginning
13 of subchapter V of chapter 148 of such title is
14 amended to read as follows:

“2531. Defense international agreements.”.

15 **SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS,**
16 **AND STANDARDIZATION.**

17 (a) LIMITED WAIVER OF RESTRICTIONS ON AC-
18 CRUED REIMBURSABLE LIABILITIES AND CREDITS FOR
19 CONTINGENCY OPERATIONS.—Section 2347 of title 10,
20 United States Code, is amended by adding at the end the
21 following new subsection:

22 “(c) The Secretary of Defense may waive the restric-
23 tions in subsections (a) and (b) for a period not to exceed
24 180 days upon a written determination that the armed
25 forces are involved in a contingency operation or that in-

1 involvement of the armed forces in a contingency operation
2 is imminent. Upon making such a determination, the Sec-
3 retary shall transmit a copy of the determination to the
4 Committees on Armed Services of the Senate and House
5 of Representatives.”.

6 (b) COMMUNICATIONS SUPPORT.—Section 2350f of
7 title 10, United States Code, is amended—

8 (1) by redesignating subsection (d) as sub-
9 section (e); and

10 (2) by inserting after subsection (c) the follow-
11 ing new subsection:

12 “(d)(1) Nothing in this section shall be construed to
13 limit the authority of the Secretary of Defense, without
14 a formal bilateral agreement or multilateral arrangement,
15 to furnish communications support and related supplies
16 to, or receive communications support and related supplies
17 from, an allied country in accordance with this subsection.

18 “(2) The Secretary of Defense may furnish or receive
19 such support and supplies on a reciprocal basis for a pe-
20 riod not to exceed 90 days—

21 “(A) in order to meet emerging operational re-
22 quirements of the United States and the allied coun-
23 try; or

24 “(B) incident to a joint military exercise with
25 the allied country.

1 “(3) If interconnection of communication circuits is
2 maintained for joint or multilateral defense purposes
3 under the authority of this subsection, the costs of main-
4 taining such circuits may be allocated among the various
5 users.”.

6 **TITLE VIII—COMMERCIAL ITEMS**

7 **SEC. 8001. DEFINITIONS.**

8 Section 4 of the Office of Federal Procurement Policy
9 Act (41 U.S.C. 403), as amended by section 4001(a), is
10 further amended—

11 (1) by striking out “Act—” and inserting in lieu
12 thereof “Act.”;

13 (2) by capitalizing the initial letter in the first
14 word of each paragraph;

15 (3) by striking out the semicolon at the end of
16 each of paragraphs (1), (2), (3), (5), (6), (7), (8),
17 and (9) and inserting in lieu thereof a period;

18 (4) in paragraphs (4) and (10), by striking out
19 “; and” at the end and inserting in lieu thereof a
20 period; and

21 (5) by adding at the end the following new
22 paragraphs:

23 “(12) The term ‘commercial item’ means—

24 “(A) property, other than real property,
25 that is of a type customarily used by the gen-

1 eral public or by nongovernmental entities in
2 the course of normal business operations for
3 purposes other than governmental purposes
4 and—

5 “(i) has been sold, leased, or licensed
6 to the general public;

7 “(ii) has not been sold, leased, or li-
8 censed to the general public but has been
9 offered for sale, lease, or license to the
10 general public; or

11 “(iii) is not yet available in the com-
12 mercial marketplace but will be made
13 available for commercial delivery within a
14 reasonable period;

15 “(B) any item that, but for—

16 “(i) modifications of a type customar-
17 ily available in the commercial market-
18 place, or

19 “(ii) minor modifications made to
20 meet Federal Government requirements,
21 would satisfy the criteria in subparagraph (A);

22 “(C) any combination of items meeting the
23 requirements of subparagraph (A), (B), or (D)
24 that are of a type customarily combined and
25 sold in combination to the general public;

1 “(D) installation services, maintenance
2 services, repair services, training services, and
3 other services if such services are procured for
4 support of an item referred to in subparagraph
5 (A), (B), or (C) and if the source of such serv-
6 ices—

7 “(i) offers such services to the general
8 public and the Federal Government con-
9 temporaneously and under similar terms
10 and conditions; and

11 “(ii) offers to use the same work force
12 for providing the Federal Government with
13 such services as the source uses for provid-
14 ing such services to the general public; and

15 “(E) any item, combination of items, or
16 service referred to in subparagraph (A), (B),
17 (C), or (D), regardless of whether the item,
18 combination of items, or service is transferred
19 between or among separate divisions, subsidi-
20 aries, or affiliates of a contractor.

21 “(13) The term ‘nondevelopmental item’
22 means—

23 “(A) any commercial item;

24 “(B) any previously developed item of sup-
25 ply that is in use by a department or agency of

1 the United States, a State or local government,
2 or a foreign government with which the United
3 States has a mutual defense cooperation agree-
4 ment;

5 “(C) any item of supply described in sub-
6 paragraph (A) or (B) that requires only minor
7 modification of the type normally available in
8 the commercial marketplace in order to meet
9 the requirements of the procuring department
10 or agency; or

11 “(D) any item of supply currently being
12 produced that does not meet the requirements
13 of subparagraph (A), (B), or (C) solely because
14 the item—

15 “(i) is not yet in use; or

16 “(ii) is not yet available in the com-
17 mercial marketplace.

18 “(14) The term ‘component’ means any item
19 supplied to the Federal Government as part of an
20 end item or of another component.

21 “(15) The term ‘commercial component’ means
22 any component that is a commercial item.”.

1 to compete in any procurement to fill such require-
2 ments.

3 “(b) IMPLEMENTATION.—The head of each executive
4 agency shall ensure that procurement officials in that ex-
5 ecutive agency, to the maximum extent practicable—

6 “(1) acquire commercial items or other
7 nondevelopmental items to meet the needs of the ex-
8 ecutive agency;

9 “(2) require prime contractors and subcontractors
10 at all levels under the executive agency con-
11 tracts to incorporate commercial items or other
12 nondevelopmental items as components of items sup-
13 plied to the executive agency;

14 “(3) modify requirements in appropriate cases
15 to ensure that the requirements can be met by com-
16 mercial items or, to the extent that commercial
17 items suitable to meet the agency’s needs are not
18 available, other nondevelopmental items;

19 “(4) state specifications in terms that enable
20 and encourage bidders and offerors to supply com-
21 mercial items or, to the extent that commercial
22 items suitable to meet the agency’s needs are not
23 available, other nondevelopmental items in response
24 to the executive agency solicitations;

1 “(5) revise the executive agency’s procurement
2 policies, practices, and procedures not required by
3 law to reduce any impediments in those policies,
4 practices, and procedures to the acquisition of com-
5 mercial items; and

6 “(6) require training of appropriate personnel
7 in the acquisition of commercial items.

8 “(c) PRELIMINARY MARKET RESEARCH.—(1) The
9 head of an executive agency shall conduct market research
10 appropriate to the circumstances—

11 “(A) before developing new specifications for a
12 procurement by that executive agency; and

13 “(B) before soliciting bids or proposals for a
14 contract in excess of the simplified acquisition
15 threshold.

16 “(2) The head of an executive agency shall use the
17 results of market research to determine whether there are
18 commercial items or, to the extent that commercial items
19 suitable to meet the agency’s needs are not available, other
20 nondevelopmental items available that—

21 “(A) meet the executive agency’s requirements;

22 “(B) could be modified to meet the executive
23 agency’s requirements; or

1 “(C) could meet the executive agency’s require-
2 ments if those requirements were modified to a rea-
3 sonable extent.”.

4 (b) REPEAL OF SUPERSEDED PROVISION.—

5 (1) SEPARATE STATEMENT OF PREFERENCE
6 FOR DEPARTMENT OF DEFENSE.—Section 2325 of
7 title 10, United States Code, is repealed.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 137 of such title
10 is amended by striking out the item relating to sec-
11 tion 2325.

12 **SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.**

13 (a) REQUIRED FAR PROVISIONS.—The Office of
14 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),
15 as amended by section 8002, is further amended by adding
16 at the end the following:

17 “FEDERAL ACQUISITION REGULATION PROVISIONS RE-
18 GARDING ACQUISITIONS OF COMMERCIAL ITEMS AND
19 COMPONENTS

20 “SEC. 34. (a) CONTRACT CLAUSES AND OTHER
21 CLAUSES.—(1)(A) The Federal Acquisition Regulation
22 shall include one or more sets of contract clauses contain-
23 ing the required terms and conditions for the acquisition
24 of commercial items and commercial components by execu-
25 tive agencies and by contractors in the performance of
26 contracts of executive agencies.

1 “(B) The contract clauses referred to in subpara-
2 graph (A) shall include only—

3 “(i) those clauses that are required to imple-
4 ment provisions of law applicable to acquisitions of
5 commercial items or commercial components, as the
6 case may be;

7 “(ii) those contract clauses that are essential
8 for the protection of the Federal Government’s inter-
9 est in an acquisition of commercial items or commer-
10 cial components, as the case may be; and

11 “(iii) those contract clauses that are determined
12 to be consistent with standard commercial practice.

13 “(2) Subject to paragraph (3), the Federal Acquisi-
14 tion Regulation shall require that, to the maximum extent
15 practicable, only the contract clauses referred to in para-
16 graph (1) be used in a contract, or be required to be used
17 in a subcontract, for the acquisition of commercial items
18 or commercial components by or for an executive agency.

19 “(3) The Federal Acquisition Regulation shall pro-
20 vide that a contract or subcontract referred to in para-
21 graph (2) may contain contract clauses other than the
22 contract clauses referred to in that paragraph only if the
23 other clauses are essential for the protection of the Fed-
24 eral Government’s interest in—

1 “(A) that contract or subcontract, as deter-
2 mined in writing by the contracting officer for such
3 contract; or

4 “(B) a class of contracts or subcontracts, as de-
5 termined by the head of an agency concerned, unless
6 the determination of that head of an agency is dis-
7 approved by the Administrator.

8 “(4) The Federal Acquisition Regulation shall pro-
9 vide standards and procedures for waiving the use of con-
10 tract clauses required pursuant to paragraph (1), other
11 than those required by law, including standards for deter-
12 mining the cases in which a waiver is appropriate.

13 “(b) MARKET ACCEPTANCE.—The Federal Acquisi-
14 tion Regulation shall provide that under appropriate con-
15 ditions the head of an executive agency may require
16 offerors to demonstrate that the items offered—

17 “(1) have either—

18 “(A) achieved commercial market accept-
19 ance; or

20 “(B) been satisfactorily supplied to an ex-
21 ecutive agency under current or recent con-
22 tracts for the same or similar requirements; and

23 “(2) otherwise meet the item description, speci-
24 fications, or other criteria prescribed in the public
25 notice and solicitation relating to the contract.

1 “(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The
2 Federal Acquisition Regulation shall include a require-
3 ment that firm, fixed price contracts or fixed price with
4 economic price adjustment contracts, be used, to the maxi-
5 mum extent practicable, for the acquisition of commercial
6 items.

7 “(d) CONTRACT QUALITY REQUIREMENTS.—The
8 Federal Acquisition Regulation shall include provisions
9 that—

10 “(1) permit, to the maximum extent prac-
11 ticable, a contractor under a commercial items ac-
12 quisition to use the contractor’s existing quality as-
13 surance system as a substitute for compliance with
14 a requirement for the Federal Government to inspect
15 or test the commercial items before the contractor’s
16 tender of those items for acceptance by the Federal
17 Government;

18 “(2) require that, to the maximum extent prac-
19 ticable, an executive agency accept commercial war-
20 ranties (including extended warranties) offered by
21 offerors of commercial items to commercial cus-
22 tomers and use such warranties for the repair and
23 replacement of commercial items; and

1 “(3) set forth guidance to executive agencies re-
2 garding the use of past performance of items and
3 sources as a factor in contract award decisions.”.

4 “(e) TREATMENT OF TRANSFERS BETWEEN AFFILI-
5 ATES.—The Federal Acquisition Regulation shall provide
6 for a transfer of commercial items from one division, sub-
7 sidiary, or affiliate of a contractor to another division, sub-
8 sidiary, or affiliate of the contractor to be treated as a
9 subcontract for purposes of section 35 of the Office of
10 Federal Procurement Policy Act and the provisions of law
11 amended by section 8005 of the Federal Acquisition
12 Streamlining Act of 1994.”.

13 (b) DEFENSE CONTRACT CLAUSES.—

14 (1) TERMINATION OF DOD AUTHORITY.—Sec-
15 tion 824(b) of the National Defense Authorization
16 Act for Fiscal Years 1990 and 1991 (Public Law
17 101–189; 10 U.S.C. 2325 note) shall cease to be ef-
18 fective on the date on which the regulations imple-
19 menting section 34 of the Office of Federal Procure-
20 ment Policy Act, as added by subsection (a), become
21 effective.

22 (2) SAVINGS PROVISION.—Notwithstanding sec-
23 tion 34(a) of the Office of Federal Procurement Pol-
24 icy Act (as added by subsection (a)), contracts of the
25 Department of Defense entered into before the date

1 on which section 824(b) ceases to be effective under
2 paragraph (1), and subcontracts entered into before
3 such date under such contracts, may include clauses
4 developed pursuant to paragraphs (2) and (3) of sec-
5 tion 824(b) of the National Defense Authorization
6 Act for Fiscal Years 1990 and 1991 (Public Law
7 101-189; 10 U.S.C. 2325 note).

8 **SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN**
9 **LAWS.**

10 The Office of Federal Procurement Policy Act (41
11 U.S.C. 401 et seq.), as amended by section 8003, is fur-
12 ther amended by adding at the end the following:

13 “CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO
14 ACQUISITIONS OF COMMERCIAL ITEMS

15 “SEC. 35. (a) IN GENERAL.—The applicability of a
16 provision of law described in subsection (c) that is enacted
17 after the date of the enactment of the Federal Acquisition
18 Streamlining Act of 1994 to contracts for the acquisition
19 of commercial items may be waived on a class basis in
20 the Federal Acquisition Regulation. Such a waiver shall
21 not apply to a provision of law that expressly refers to
22 this section and prohibits the waiver of that provision of
23 law.

24 “(b) WAIVER OF APPLICABILITY TO SUB-
25 CONTRACTS.—(1) The applicability of a provision of law
26 described in subsection (c) to subcontracts under a con-

1 tract for the acquisition of commercial items or a sub-
2 contract for the acquisition of commercial components
3 may be waived on a class basis in the Federal Acquisition
4 Regulation. Such a waiver shall not apply to a provision
5 of law that expressly refers to this section and prohibits
6 the waiver of that provision of law.

7 “(2) Nothing in this subsection shall be construed to
8 authorize the waiver of the applicability of any provision
9 of law with respect to—

10 “(A) any contract with a prime contractor; or

11 “(B) any subcontract under a contract with a
12 prime contractor who does not substantially trans-
13 form the commercial items supplied under the con-
14 tract.

15 “(c) COVERED LAW.—A provision of law referred to
16 in subsections (a) and (b) is any provision of law that,
17 as determined by the Federal Acquisition Regulatory
18 Council, sets forth policies, procedures, requirements, or
19 restrictions for the procurement of property or services by
20 the Federal Government.”.

21 **SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF**

22 **LAW.**

23 (a) ARMED SERVICES ACQUISITIONS.—

24 (1) PROHIBITION ON CONTINGENT FEES.—Sec-
25 tion 2306(b) of title 10, United States Code, as

1 amended by section 4022(a), is further amended by
2 inserting before the period at the end of the sentence
3 added by section 4022(a) the following: “or to a con-
4 tract for the acquisition of commercial items”.

5 (2) REQUIREMENT TO IDENTIFY SUPPLIERS
6 AND SOURCES OF SUPPLIES.—Paragraph (2) of sec-
7 tion 2384(b) of title 10, United States Code, is
8 amended to read as follows:

9 “(2) The regulations prescribed pursuant to para-
10 graph (1) do not apply to a contract that requires the de-
11 livery of supplies that are commercial items, as defined
12 in section 2302 of this title.”.

13 (3) PROHIBITION AGAINST DOING BUSINESS
14 WITH CERTAIN OFFERORS OR CONTRACTORS.—Sec-
15 tion 2393(d) of title 10, United States Code, as
16 amended by section 4022(e), is further amended by
17 adding at the end the following: “The requirement
18 shall not apply in the case of a subcontract for the
19 acquisition of commercial items (as defined in sec-
20 tion 4(12) of the Office of Federal Procurement Pol-
21 icy Act (41 U.S.C. 403(12))).”.

22 (4) PROHIBITION ON LIMITATION OF SUB-
23 CONTRACTOR DIRECT SALES.—Section 2402 of title
24 10, United States Code, as amended by section

1 4022(b), is further amended by adding at the end
2 the following new subsection:

3 “(d)(1) An agreement between the contractor in a
4 contract for the acquisition of commercial items and a
5 subcontractor under such contract that restricts sales by
6 such subcontractor directly to persons other than the con-
7 tractor may not be considered to unreasonably restrict
8 sales by that subcontractor to the United States in viola-
9 tion of the provision included in such contract pursuant
10 to subsection (a) if the agreement does not result in the
11 Federal Government being treated differently with regard
12 to the restriction than any other prospective purchaser of
13 such commercial items from that subcontractor.

14 “(2) In paragraph (1), the term ‘commercial item’
15 has the meaning given such term in section 4(12) of the
16 Office of Federal Procurement Policy Act (41 U.S.C.
17 403(12)).”.

18 (5) CONTRACTOR INVENTORY ACCOUNTING SYS-
19 TEMS: STANDARDS.—Section 2410b of title 10,
20 United States Code, is amended—

21 (A) by inserting “(a) REGULATIONS RE-
22 QUIRED.—” before “The Secretary of Defense”;
23 and

24 (B) by adding at the end the following new
25 subsection:

1 “(b) INAPPLICABILITY TO ACQUISITIONS OF COM-
2 MERCIAL ITEMS.—The regulations prescribed pursuant to
3 subsection (a) need not apply to a contract for the acqui-
4 sition of commercial items (as defined in section 4(12) of
5 the Office of Federal Procurement Policy Act (41 U.S.C.
6 403(12))).”.

7 (6) PROHIBITION ON PERSONS CONVICTED OF
8 DEFENSE-CONTRACT RELATED FELONIES.—Para-
9 graph (4) of section 2408(a) of title 10, United
10 States Code, as added by section 4022(f), is amend-
11 ed—

12 (A) by inserting after subparagraph (A)
13 the following:

14 “(B) A contract referred to in such subpara-
15 graph that is for the acquisition of commercial items
16 (as defined in section 4(12) of the Office of Federal
17 Procurement Policy Act (41 U.S.C. 403(12))).”; and

18 (B) by inserting “or (B)” before the period
19 at the end of subparagraph (C).

20 (b) CIVILIAN AGENCY ACQUISITIONS.—

21 (1) RESTRICTIONS ON SUBCONTRACTOR SALES
22 TO THE UNITED STATES.—Section 303G of the Fed-
23 eral Property and Administrative Services Act of
24 1949 (41 U.S.C. 253g), as amended by section

1 4023(b), is further amended by adding at the end
2 the following new subsection:

3 “(d) An agreement between the contractor in a con-
4 tract for the acquisition of commercial items and a sub-
5 contractor under such contract that restricts sales by such
6 subcontractor directly to persons other than the contractor
7 may not be considered to unreasonably restrict sales by
8 that subcontractor to the United States in violation of the
9 provision included in such contract pursuant to subsection
10 (a) if the agreement does not result in the Federal Govern-
11 ment being treated differently with regard to the restric-
12 tion than any other prospective purchaser of such commer-
13 cial items from that subcontractor.”.

14 (2) PROHIBITION ON CONTINGENT FEES.—Sec-
15 tion 304(a) of the Federal Property and Administra-
16 tive Services Act of 1949 (41 U.S.C. 254(a)), as
17 amended by section 4023(a) is further amended by
18 inserting before the period at the end of the sentence
19 added by section 4041 the following: “or to a con-
20 tract for the acquisition of commercial items”.

21 (c) ACQUISITIONS GENERALLY.—

22 (1) FEDERAL WATER POLLUTION CONTROL
23 ACT.—Section 508 of the Federal Water Pollution
24 Control Act (33 U.S.C. 1368) is amended by adding
25 at the end the following new subsection:

1 “(f)(1) No certification by a contractor, and no con-
2 tract clause, may be required in the case of a contract
3 for the acquisition of commercial items in order to imple-
4 ment a prohibition or requirement of this section or a pro-
5 hibition or requirement issued in the implementation of
6 this section.

7 “(2) In paragraph (1), the term ‘commercial item’
8 has the meaning given such term in section 4(12) of the
9 Office of Federal Procurement Policy Act (41 U.S.C.
10 403(12)).”.

11 (2) CONTRACT WORK HOURS AND SAFETY
12 STANDARDS ACT.—The Contract Work Hours and
13 Safety Standards Act (title I of the Work Hours and
14 Safety Act of 1962 (40 U.S.C. 327 et seq.)) is
15 amended by adding at the end the following new sec-
16 tion:

17 “SEC. 108. (a) No certification by a contractor, and
18 no contract clause, may be required in the case of a con-
19 tract for the acquisition of commercial items in order to
20 implement a prohibition or requirement in this title.

21 “(b) In subsection (a), the term ‘commercial item’
22 has the meaning given such term in section 4(12) of the
23 Office of Federal Procurement Policy Act (41 U.S.C.
24 403(12)).”.

1 (3) OFFICE OF FEDERAL PROCUREMENT POL-
2 ICY ACT REQUIREMENT RELATING TO PROCUREMENT
3 INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of
4 the Office of Federal Procurement Policy Act (41
5 U.S.C. 423) is amended by adding at the end the
6 following new subparagraph:

7 “(C) This subsection does not apply to a contract for
8 the acquisition of commercial items.”.

9 (4) CERTAIN PROVISIONS OF THE ANTI-KICK-
10 BACK ACT OF 1986.—

11 (A) REQUIREMENT FOR CONTRACT
12 CLAUSE.—Section 7 of the Anti-Kickback Act
13 of 1986 (41 U.S.C. 57), as amended by section
14 4024(b), is further amended by inserting before
15 the period at the end of subsection (d) the fol-
16 lowing: “or to a prime contract for the acquisi-
17 tion of commercial items (as defined in section
18 4(12) of such Act (41 U.S.C. 403(12))).”.

19 (B) INSPECTION AUTHORITY.—Section 8
20 of such Act (41 U.S.C. 58) is amended by add-
21 ing at the end the following: “This section does
22 not apply with respect to a prime contract for
23 the acquisition of commercial items (as defined
24 in section 4(12) of the Office of Federal Pro-
25 curement Policy Act (41 U.S.C. 403(12))).”.

1 (5) DRUG-FREE WORKPLACE ACT OF 1988.—
2 Section 5152(a)(1) of the Drug-Free Workplace Act
3 of 1988 (subtitle D of title V of Public Law 100–
4 690; 41 U.S.C. 701(a)(1)), as amended by section
5 4024(e), is further amended by inserting after the
6 matter inserted by such section 4024(e) the follow-
7 ing: “, other than a contract for the procurement of
8 commercial items (as defined in section 4(12) of
9 such Act (41 U.S.C. 403(12))),”.

10 (6) CLEAN AIR ACT.—Section 306 of the Clean
11 Air Act (42 U.S.C. 7606) is amended by adding at
12 the end the following new subsection:

13 “(f)(1) No certification by a contractor, and no con-
14 tract clause, may be required in the case of a contract
15 for the acquisition of commercial items in order to imple-
16 ment a prohibition or requirement of this section or a pro-
17 hibition or requirement issued in the implementation of
18 this section.

19 “(2) In paragraph (1), the term ‘commercial item’
20 has the meaning given such term in section 4(12) of the
21 Office of Federal Procurement Policy Act (41 U.S.C.
22 403(12)).”.

23 (7) FLY AMERICAN REQUIREMENTS.—Section
24 1117 of the Federal Aviation Act of 1958 (49

1 U.S.C. App. 1517) is amended by adding at the end
2 the following new subsection:

3 “(e)(1) No certification by a contractor, and no con-
4 tract clause, may be required in the case of a contract
5 for the transportation of commercial items in order to im-
6 plement a requirement in this section.

7 “(2) In paragraph (1), the term ‘commercial item’
8 has the meaning given such term in section 4(12) of the
9 Office of Federal Procurement Policy Act (41 U.S.C.
10 403(12)).”.

11 **SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OF-**
12 **FERS OF COMMERCIAL ITEMS.**

13 Section 18(a) of the Office of Federal Procurement
14 Policy Act (41 U.S.C. 416(a)) is amended by adding at
15 the end the following new paragraph:

16 “(4) The requirements of paragraph (3)(B) do not
17 apply to contracts for the purchase of commercial items.
18 The Administrator shall prescribe for such contracts ap-
19 propriate limits on the applicability of a deadline for sub-
20 mission of bids or proposals that is required by subsection
21 (a)(1). Such limits shall be incorporated in the Federal
22 Acquisition Regulation.”.

1 **SEC. 8007. ADVOCATES FOR ACQUISITION OF COMMERCIAL**
2 **AND NONDEVELOPMENTAL ITEMS.**

3 (a) RESPONSIBILITIES OF THE ADVOCATE FOR COM-
4 PETITION.—Section 20(c) of the Office of Federal Pro-
5 curement Policy Act (41 U.S.C. 418(c)) is amended to
6 read as follows:

7 “(c) The advocate for competition for each procuring
8 activity shall be responsible for promoting full and open
9 competition, promoting the acquisition of commercial
10 items and other nondevelopmental items, and challenging
11 barriers to such acquisition, including such barriers as un-
12 necessarily restrictive statements of need, unnecessarily
13 detailed specifications, and unnecessarily burdensome con-
14 tract clauses.”.

15 (b) REPEAL OF SUPERSEDED PROVISION.—Section
16 28 of such Act (41 U.S.C. 424) is repealed.

17 **SEC. 8008. PROVISIONS NOT AFFECTED.**

18 Nothing in this title shall be construed as amending,
19 modifying, or superseding, or as intended to impair or re-
20 strict authorities or responsibilities under—

21 (1) section 111 of the Federal Property and
22 Administrative Services Act of 1949 (40 U.S.C.
23 759), popularly referred to as the “Brooks Auto-
24 matic Data Processing Act”;

25 (2) title IX of the Federal Property and Admin-
26 istrative Services Act of 1949 (40 U.S.C. 541 et

1 seq.), popularly referred to as the “Brooks Archi-
2 tect-Engineers Act”;

3 (3) section 8(a) of the Small Business Act (15
4 U.S.C. 637(a)) or any other provision of that Act;
5 or

6 (4) the Act of June 25, 1938 (41 U.S.C. 46-
7 48c), that was revised and reenacted in the Act of
8 June 23, 1971 (85 Stat. 77), popularly referred to
9 as the “Javits-Wagner-O’Day Act”.

10 **SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL**
11 **GOVERNMENT USE OF MARKET RESEARCH.**

12 (a) REPORT REQUIRED.—Not later than 2 years
13 after the date of the enactment of this Act, the Comptrol-
14 ler General of the United States shall submit to the Con-
15 gress a report on the use of market research by the Fed-
16 eral Government in support of the procurement of com-
17 mercial items and nondevelopmental items.

18 (b) CONTENT OF REPORT.—The report shall include
19 the following:

20 (1) A review of existing Federal Government
21 market research efforts to gather data concerning
22 commercial and other nondevelopmental items.

23 (2) A review of the feasibility of creating a Gov-
24 ernment-wide data base for storing, retrieving, and

1 analyzing market data, including use of existing
2 Federal Government resources.

3 (3) Any recommendations for changes in law or
4 regulations that the Comptroller General considers
5 appropriate.

6 **TITLE IX—EFFECTIVE DATES**
7 **AND IMPLEMENTATION**

8 **SEC. 9001. EFFECTIVE DATES.**

9 (a) EFFECTIVE DATE OF ACT.—Except as otherwise
10 provided in this Act, this Act shall take effect on the date
11 of the enactment of this Act.

12 (b) EFFECTIVE DATE OF AMENDMENTS.—Except as
13 otherwise provided in this Act, the amendments made by
14 this Act shall take effect on the date on which final imple-
15 menting regulations are prescribed in accordance with sec-
16 tion 9002.

17 **SEC. 9002. IMPLEMENTING REGULATIONS.**

18 (a) PROPOSED CHANGES.—Proposed changes to the
19 Federal Acquisition Regulation and such other proposed
20 regulations (or changes to existing regulations) as may be
21 necessary to implement this Act shall be published in the
22 Federal Register not later than 210 days after the date
23 of the enactment of this Act.

1 (b) PUBLIC COMMENT.—The proposed regulations
2 described in subsection (a) shall be made available for
3 public comment for a period of not less than 60 days.

4 (c) FINAL REGULATIONS.—Final regulations shall be
5 published in the Federal Register not later than 330 days
6 after the date of enactment of this Act.

7 (d) APPLICABILITY.—(1) The amendments made by
8 this Act shall apply, in the manner prescribed in such final
9 regulations, to any solicitation that is issued or any unso-
10 licited proposal that is received on or after the date de-
11 scribed in paragraph (3).

12 (2) The amendments made by this Act shall apply,
13 to the extent and in the manner prescribed in such final
14 regulations, to any matter related to—

15 (A) a contract that is in effect on the date de-
16 scribed in paragraph (3);

17 (B) an offer under consideration on the date
18 described in paragraph (3); or

19 (C) any other proceeding or action that is ongo-
20 ing on the date described in paragraph (3).

21 (3) The date referred to in paragraphs (1) and (2)
22 is the date specified in such regulations, which—

23 (A) shall not be earlier than the end of the 30-
24 day period that begins on the date the regulations
25 required by subsection (c) are published; and

1 (B) shall not be later than October 1, 1995.

2 (e) SAVINGS PROVISION.—Nothing in this Act shall
3 be construed to affect the validity of any action taken or
4 any contract entered into prior to the date specified in
5 the regulations pursuant to subsection (d)(3) except to the
6 extent and in the manner prescribed in such regulations.

7 **SEC. 9003. EVALUATION BY THE COMPTROLLER GENERAL.**

8 (a) EVALUATION RELATING TO ISSUANCE OF REGU-
9 LATIONS.—Not later than December 1, 1995, the Comp-
10 troller General shall submit to the committees referred to
11 in subsection (c) a report evaluating compliance with the
12 requirements in section 9002, relating to the issuance of
13 implementing regulations.

14 (b) EVALUATION OF IMPLEMENTATION OF REGULA-
15 TIONS.—Not later than December 1, 1996, the Comptrol-
16 ler General shall submit to the committees referred to in
17 subsection (c) a report evaluating the effectiveness of the
18 regulations implementing this Act in streamlining the ac-
19 quisition system and fulfilling the other purposes of this
20 Act.

21 (c) COMMITTEES DESIGNATED TO RECEIVE THE RE-
22 PORTS.—The Comptroller General shall submit the re-
23 ports required by this section to the Committees on Armed
24 Services and on Governmental Affairs of the Senate and

1 the Committees on Small Business on Government Oper-
2 ations of the House of Representatives.

3 **SEC. 9004. DATA COLLECTION THROUGH THE FEDERAL**
4 **PROCUREMENT DATA SYSTEM.**

5 (a) DATA COLLECTION REQUIRED.—The Federal
6 Procurement Data System described in section 6(d)(4)(A)
7 of the Office of Federal Procurement Policy Act (41
8 U.S.C. 405(d)(4)(A)) shall be modified to collect from con-
9 tracts in excess of the simplified acquisition threshold data
10 pertaining to the following matters:

11 (1) Contract awards made pursuant to competi-
12 tions conducted pursuant to section 2323 of title 10,
13 United States Code, or section 8(c) of the Small
14 Business Act (15 U.S.C. 637(c)).

15 (2) Awards to business concerns owned and
16 controlled by women.

17 (3) Number of offers received in response to a
18 solicitation.

19 (4) Task order contracts.

20 (5) Contracts for the acquisition of commercial
21 items.

22 (b) DEFINITION.—In this section, the term “sim-
23 plified acquisition threshold” has the meaning given such
24 term in section 4 of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 403).

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Calendar No. 476

103^D CONGRESS
2^D SESSION

S. 2206

A BILL

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

JUNE 20 (legislative day, JUNE 7), 1994

Read twice and placed on the calendar