

108TH CONGRESS  
1ST SESSION

# H. R. 3426

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2003

Mr. WYNN (for himself, Mr. KANJORSKI, Ms. BALDWIN, Mr. BOSWELL, Mrs. CAPPS, Ms. CARSON of Indiana, Mr. COSTELLO, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Ms. DELAURO, Mr. DICKS, Mr. DINGELL, Mr. DOGGETT, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FROST, Mr. HOFFEL, Mr. HOLDEN, Ms. JACKSON-LEE of Texas, Mrs. JONES of Ohio, Ms. KILPATRICK, Mr. KIND, Mr. KUCINICH, Mr. LAMPSON, Mr. LEACH, Mr. LEVIN, Mr. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Ms. MCCOLLUM, Mr. MCINTYRE, Mr. MICHAUD, Mr. MOORE, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. PETERSON of Minnesota, Mr. SANDERS, Mr. SANDLIN, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. THOMPSON of Mississippi, Mr. TOWNS, Mr. UDALL of Colorado, Ms. WATSON, Mr. WAXMAN, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, 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; TABLE OF CONTENTS.**

4        (a) SHORT TITLE.—This Act may be cited as the  
 5 “Truthfulness, Responsibility, and Accountability in Con-  
 6 tracting Act of 2003”.

7        (b) TABLE OF CONTENTS.—The table of contents of  
 8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Statement of purpose.
- Sec. 3. Definitions.
- Sec. 4. Certification of compliance.
- Sec. 5. Agency reporting systems and required reports.
- Sec. 6. Requirement for public-private competition for functions performed by  
Federal employees.
- Sec. 7. Requirement for public-private competition for new functions.
- Sec. 8. Review of contractor performance.
- Sec. 9. Comptroller General reports.
- Sec. 10. Repeal of certain reporting requirements.
- Sec. 11. Applicability.
- Sec. 12. Waivers from public-private competition requirements for reason of na-  
tional security and homeland security.
- Sec. 13. Limited pilot program to implement recommendations of commercial  
activities panel.

9 **SEC. 2. STATEMENT OF PURPOSE.**

10        The purpose of this Act is to promote the interests  
 11 of the taxpayers through the use of a fair public-private  
 12 competition process, and to provide accountability to the  
 13 taxpayers for Government work performed by contractors  
 14 and Federal employees.

15 **SEC. 3. DEFINITIONS.**

16        For purposes of this Act:

17            (1) AGENCY.—The term “agency” means any  
 18        department, agency, bureau, commission, activity, or

1 organization of the United States, that employs an  
2 employee as defined under paragraph (6).

3 (2) CONTRACTING.—The term “contracting”—

4 (A) means—

5 (i) the transfer of a function from  
6 performance by Federal employees to a  
7 contractor; or

8 (ii) the assignment to a contractor of  
9 the performance of a function not cur-  
10 rently performed by Federal employees or  
11 a contractor; and

12 (B) includes privatization, outsourcing,  
13 and contracting out.

14 (3) CONTRACTING IN.—The term “contracting  
15 in” means the transfer of the performance of a func-  
16 tion from a contractor to Federal employees.

17 (4) CONTRACTOR.—The term “contractor”  
18 means an individual or other person that performs  
19 a function for an agency under a contract with a  
20 contractor.

21 (5) FEDERAL EMPLOYEE.—The term “Federal  
22 employee” means any individual employed—

23 (A) as a civilian in a military department  
24 (as defined in section 102 of title 5, United  
25 States Code);

1 (B) in an Executive agency (as defined in  
2 section 105 of title 5, United States Code), in-  
3 cluding an employee who is paid from non-  
4 appropriated funds;

5 (C) in those units of the legislative and ju-  
6 dicial branches of the Federal Government hav-  
7 ing positions in the competitive service;

8 (D) in the Library of Congress;

9 (E) in the Government Printing Office; or

10 (F) by the Governors of the Federal Re-  
11 serve System.

12 (6) FUNCTION.—The term “function” means a  
13 service activity, not procurement of goods.

14 (7) MOST EFFICIENT ORGANIZATION.—The  
15 term “most efficient organization” means the orga-  
16 nization of Federal employees that would most effi-  
17 ciently perform a function after a public-private  
18 competition, as proposed by a Federal employee.

19 (8) OFFER.—The term “offer” means the for-  
20 mal response of a bidder or the most efficient orga-  
21 nization to a solicitation.

22 (9) PATIENT CARE.—The term “patient  
23 care”—

24 (A) means direct patient medical and hos-  
25 pital care that the Department of Veterans Af-

1           fairs or other Federal hospitals or clinics are  
2           not capable of furnishing because of geo-  
3           graphical inaccessibility, medical emergency, or  
4           particularly unique type of care or service re-  
5           quired; and

6                   (B) does not include support and adminis-  
7           trative services for hospital and clinic oper-  
8           ations, including food service, laundry services,  
9           grounds maintenance, transportation services,  
10          office operations, and supply processing and  
11          distribution services.

12          (10) PUBLIC-PRIVATE COMPETITION.—The  
13          term “public-private competition”—

14                   (A) means the process by which it is deter-  
15          mined whether a function is to be performed by  
16          Federal employees or contractors, that is cost  
17          based and that takes into account items other  
18          than cost, including quality and reliability; and

19                   (B) includes, but does not require, the  
20          public-private competition process described in  
21          Office of Management and Budget Circular A-  
22          76.

23          (11) SOLICITATION.—The term “solicitation”  
24          means the formal offer of an agency to review func-  
25          tions, whether or not currently performed by Federal

1 employees or contractors, for public-private competi-  
2 tion.

3 **SEC. 4. CERTIFICATION OF COMPLIANCE.**

4 (a) REQUIREMENTS FOR HEADS OF AGENCIES.—

5 (1) CERTIFICATIONS.—Not later than 1 year  
6 after the date of enactment of this Act, the head of  
7 each agency shall submit to the Director of the Of-  
8 fice of Management and Budget a certification  
9 that—

10 (A) the agency has established a central-  
11 ized reporting system in accordance with sec-  
12 tion 5;

13 (B) in the case of each function of the  
14 agency that is being performed under con-  
15 tracting undertaken after the date of enactment  
16 of this Act, the contracting function decision  
17 was based on a public-private competition de-  
18 scribed under section 6 or 7, as applicable;

19 (C) the agency is not managing Federal  
20 employees by any arbitrary limitations in ac-  
21 cordance with sections 6 or 7, as applicable,  
22 and 9; and

23 (D) the agency is reviewing work per-  
24 formed by contractors, recompeting or con-  
25 tracting in work when appropriate, and sub-

1           jecting to public-private competition an approxi-  
2           mate number of Federal employee and con-  
3           tractor positions in accordance with section 9.

4           (2) PUBLIC AVAILABILITY.—The Director of  
5           the Office of Management and Budget shall—

6                   (A) promptly, after receiving certifications  
7                   under paragraph (1)(B), publish in the Federal  
8                   Register notices of the availability of the certifi-  
9                   cations to the public, including the names, busi-  
10                  ness addresses, and business telephone numbers  
11                  of the officials from whom the certifications can  
12                  be obtained; and

13                   (B) ensure that, after the removal of pro-  
14                   prietary information, the head of each agency  
15                   makes the certifications of that agency available  
16                   to the public—

17                           (i) upon request; and

18                           (ii) on the World Wide Web.

19           (b) SUSPENSION OF CONTRACTING FOR SERVICES  
20           PENDING SATISFACTION OF CERTIFICATION REQUIRE-  
21           MENT.—

22                   (1) INITIAL DETERMINATIONS.—Beginning 1  
23                   year after the date of enactment of this Act, the  
24                   head of an agency may not enter into any contract  
25                   for the performance of services until the Director of

1 the Office of Management and Budget, after review-  
2 ing the certification required under subsection  
3 (a)(1), determines that the agency is making sub-  
4 stantial progress toward meeting the requirements  
5 under subsection (a)(1) (A), (B), (C), and (D).

6 (2) INAPPLICABILITY.—This subsection does  
7 not apply to work performed by a contractor before  
8 the date of enactment of this Act.

9 (3) SUBSEQUENT DETERMINATIONS.—If an  
10 agency head is prohibited from entering into a con-  
11 tract after a determination is made under paragraph  
12 (1), that agency head may subsequently request an-  
13 other determination from the Director of the Office  
14 of Management and Budget under that paragraph.

15 (4) PUBLIC AVAILABILITY.—The Director of  
16 the Office of Management and Budget shall—

17 (A) promptly after making a determination  
18 as to whether an agency is making substantial  
19 progress under paragraph (1), publish that de-  
20 termination in the Federal Register; and

21 (B) make that determination available to  
22 the public—

23 (i) upon request; and

24 (ii) on the World Wide Web.

25 (c) WAIVER OF SUSPENSION.—

1           (1) IN GENERAL.—The Director of the Office of  
2 Management and Budget may waive the applicability  
3 of this section with respect to a contract for services  
4 if—

5           (A) the Director determines that it is nec-  
6 essary to do so in the interest of the national  
7 security, homeland security, extraordinary eco-  
8 nomic harm, or patient care; and

9           (B) the contract is awarded in accordance  
10 with the public-private competition require-  
11 ments established in sections 6 and 7, as appli-  
12 cable.

13          (2) NOTICE.—After granting any waiver under  
14 this subsection, the Director of the Office of Man-  
15 agement and Budget shall promptly publish a notice  
16 of that waiver in the Federal Register that—

17           (A) identifies the facilities, units, or activi-  
18 ties affected;

19           (B) explains the justification for the waiv-  
20 er; and

21           (C) identifies the duration of the waiver.

22          (d) GAO MONITORING.—While an agency is oper-  
23 ating under a suspension of contracting authority under  
24 subsection (b), the Comptroller General shall—

1           (1) monitor the agency's compliance with the  
2 requirements of this Act; and

3           (2) submit to Congress, every 60 days, a report  
4 on the extent of the agency's compliance with such  
5 requirements.

6           (e) EXCEPTION.—

7           (1) IN GENERAL.—Notwithstanding subsection  
8 (b), an agency may undertake a contracting effort of  
9 a function if the function—

10                   (A) is not performed by Federal employees  
11 at the time of the undertaking; and

12                   (B) under the contracting would be per-  
13 formed by—

14                           (i) the blind, as defined under section  
15 5(1) of the Javits-Wagner-O'Day Act (41  
16 U.S.C. 48b(1)); or

17                           (ii) individuals with a disability as de-  
18 fined under section 7(9) of the Rehabilita-  
19 tion Act of 1973 (29 U.S.C. 705(9)).

20           (2) TERMINATION OF CONTRACT.—If the Direc-  
21 tor of the Office of Management and Budget deter-  
22 mines that the performance of the function in a con-  
23 tract entered into under paragraph (1) is not being  
24 performed by individuals described under clause (i)

1 or (ii) of paragraph (1)(B), the contract shall be im-  
2 mediately terminated.

3 **SEC. 5. AGENCY REPORTING SYSTEMS AND REQUIRED RE-**  
4 **PORTS.**

5 (a) CENTRALIZED REPORTING SYSTEM.—Not later  
6 than 1 year after the date of enactment of this Act, the  
7 head of each agency shall establish a centralized reporting  
8 system in accordance with guidance promulgated by the  
9 Director of the Office of Management and Budget that  
10 allows the agency to generate periodic reports on the con-  
11 tracting efforts of the agency. Such centralized reporting  
12 system shall be designed to enable the agency to generate  
13 reports on efforts regarding both contracting and con-  
14 tracting in.

15 (b) REPORTS ON CONTRACTING EFFORTS.—

16 (1) INITIAL REPORTS.—Not later than 1 year  
17 after the date of enactment of this Act, the head of  
18 each agency shall prepare and submit to the Direc-  
19 tor of the Office of Management and Budget a re-  
20 port on the contracting efforts of the agency under-  
21 taken during the fiscal year immediately preceding  
22 the fiscal year in which this Act is enacted. Such re-  
23 port shall comply with the requirements in para-  
24 graph (3).

1           (2) SUBSEQUENT REPORTS.—For the fiscal  
2 year in which this Act is enacted and every fiscal  
3 year thereafter, the head of each agency shall com-  
4 plete and submit to the Director of the Office of  
5 Management and Budget a report on the contracting  
6 efforts undertaken by the agency during that fiscal  
7 year. The report for a fiscal year shall comply with  
8 the requirements in paragraph (3), and shall be  
9 completed and submitted not later than the end of  
10 the first fiscal quarter of the subsequent fiscal year.

11           (3) CONTENTS.—With regard to each con-  
12 tracting effort undertaken by the agency, the reports  
13 referred to in this subsection shall include the fol-  
14 lowing information:

15                   (A) The contract number and the Federal  
16 supply class or service code.

17                   (B) The names, business addresses, and  
18 business telephone numbers of the officials who  
19 supervised the contracting effort.

20                   (C) The competitive process used or the  
21 statutory or regulatory authority relied on to  
22 enter into the contract without public-private  
23 competition.

24                   (D) The cost of Federal employee perform-  
25 ance at the time the work was contracted out

1 (if the work had previously been performed by  
2 Federal employees).

3 (E) The cost of Federal employee perform-  
4 ance under the most efficient organization plan  
5 identified for that performance (if the work was  
6 contracted out through Office of Management  
7 and Budget Circular A-76).

8 (F) The anticipated cost of contractor per-  
9 formance, based on the award.

10 (G) The current cost of contractor per-  
11 formance.

12 (H) The actual savings and cost increases,  
13 expressed both as a dollar amount and as a per-  
14 centage of the cost of performance by Federal  
15 employees, based on the current cost, and an  
16 explanation of the difference, if any.

17 (I) A description of the quality control  
18 process used by the agency in connection with  
19 monitoring the contracting effort, identification  
20 of the applicable quality control standards, the  
21 frequency of the preparation of quality control  
22 reports, and an assessment of whether the con-  
23 tractor met, exceeded, or failed to achieve the  
24 quality control standards.

1           (J) The number of contractor employees  
2 performing the contracting effort under the  
3 contract and any related subcontracts.

4 (c) REPORT ON CONTRACTING IN EFFORTS.—

5           (1) IN GENERAL.—For the current fiscal year  
6 and every fiscal year thereafter, every agency shall  
7 complete and submit to the Director of the Office of  
8 Management and Budget a report on the contracting  
9 in efforts undertaken by the agency during that fis-  
10 cal year. The report for a fiscal year shall comply  
11 with the requirements in paragraph (2), and shall be  
12 completed and submitted not later than the end of  
13 the first fiscal quarter of the subsequent fiscal year.

14           (2) CONTENTS.—The reports referred to in  
15 paragraph (1) shall include for each contracting in  
16 effort undertaken by the agency the following infor-  
17 mation:

18           (A) A description of the type of work in-  
19 volved.

20           (B) The names, business addresses, and  
21 business telephone numbers of the officials who  
22 supervised the contracting in effort.

23           (C) The cost of performance at the time  
24 the work was contracted in.

1 (D) The current cost of performance by  
2 Federal employees or military personnel.

3 (d) REPORT ON FEDERAL EMPLOYEE POSITIONS.—

4 Not later than 30 days after the end of each fiscal year,  
5 every agency shall submit to the Office of Management  
6 and Budget a report on the number of Federal employee  
7 positions and contractor employee positions that have been  
8 subject to public-private competition during that fiscal  
9 year.

10 (e) SUBMISSION OF REPORTS TO CONGRESS.—

11 (1) IN GENERAL.—The Director of the Office of  
12 Management and Budget shall compile all reports  
13 submitted under this section and submit the reports  
14 to the committees referred to under paragraph (2),  
15 not later than 120 days after the end of the applica-  
16 ble fiscal year.

17 (2) COMMITTEES.—The reports compiled under  
18 this subsection shall be submitted to the Committee  
19 on Government Reform of the House of Representa-  
20 tives and to the Committee on Governmental Affairs  
21 of the Senate.

22 (f) PUBLIC AVAILABILITY OF REPORTS.—

23 (1) PUBLICATIONS.—The Director of the Office  
24 of Management and Budget shall promptly publish  
25 in the Federal Register notices including a descrip-

1       tion of when the reports referred to in this section  
2       are available to the public and the names, business  
3       addresses, and business telephone numbers of the of-  
4       ficials from whom the reports may be obtained.

5               (2) AVAILABILITY ON INTERNET.—The reports  
6       referred to in this section shall be made available  
7       through the Internet.

8               (3) PROPRIETARY AND NATIONAL SECURITY IN-  
9       FORMATION.—Proprietary information or informa-  
10      tion to which section 552(b)(1) of title 5, United  
11      States Code, applies shall be excised from informa-  
12      tion published or reports made available under this  
13      subsection.

14              (g) REVIEW.—The Director of the Office of Manage-  
15      ment and Budget shall review the reports referred to in  
16      this section and consult with the head of the agency re-  
17      garding the content of such reports.

18      **SEC. 6. REQUIREMENT FOR PUBLIC-PRIVATE COMPETI-**  
19                              **TION FOR FUNCTIONS PERFORMED BY FED-**  
20                              **ERAL EMPLOYEES.**

21              After the date of enactment of this Act and in accord-  
22      ance with section 3, any decision by an agency to transfer  
23      the performance of a function, in whole or in part, from  
24      Federal employees to a contractor shall be based on the  
25      results of a public-private competition process that—

1 (1) formally compares the costs of Federal em-  
2 ployee performance of the new function with the  
3 costs of the performance by a contractor;

4 (2) employs the most efficient organization  
5 process;

6 (3) determines whether the offers submitted  
7 meet the needs of the agency with respect to items  
8 other than cost, including quality and reliability;

9 (4) does not include in the cost comparison any  
10 savings to the agency attributable to lower pay,  
11 health insurance benefits, or retirement benefits pro-  
12 vided by the contractor; and

13 (5) ensures continued performance of the func-  
14 tion by Federal employees if the agency determines  
15 that at least a 10-percent cost savings would not be  
16 achieved by performance of the function by a con-  
17 tractor.

18 **SEC. 7. REQUIREMENT FOR PUBLIC-PRIVATE COMPETI-**  
19 **TION FOR NEW FUNCTIONS.**

20 (a) **IN GENERAL.**—After the date of enactment of  
21 this Act and in accordance with section 3, any decision  
22 by an agency to assign to a contractor the performance  
23 of a function not currently performed by Federal employ-  
24 ees or a contractor shall be based on the results of a pub-  
25 lic-private competition process that—

1 (1) formally compares the costs of Federal em-  
2 ployee performance of the new function with the  
3 costs of the performance by a contractor;

4 (2) employs the most efficient organization  
5 process;

6 (3) determines whether the offers submitted  
7 meet the needs of the agency with respect to items  
8 other than cost, including quality and reliability;

9 (4) does not include in the cost comparison any  
10 savings to the agency attributable to lower pay,  
11 health insurance benefits, or retirement benefits pro-  
12 vided by the contractor; and

13 (5) includes a determination that performance  
14 of the function by a contractor would be less costly  
15 over the term of the contract than performance by  
16 Federal employees during the same period.

17 (b) WAIVER OF PUBLIC-PRIVATE COMPETITION RE-  
18 QUIREMENT.—

19 (1) IN GENERAL.—The head of an Agency may  
20 waive the application of subsection (a) to a function  
21 if—

22 (A) there is no reasonable expectation that  
23 Federal employees would win a public-private  
24 competition for the function; and

1           (B) issuance of a waiver would not serve to  
2           reduce significantly the level of or quality of  
3           public-private competition in the future award  
4           or performance of work associated with the  
5           function.

6           (2) PUBLICATION OF WAIVER.—The head of an  
7           agency shall promptly publish in the Federal Reg-  
8           ister a copy of each waiver under this subsection.

9           (c) MINIMAL LEVELS OF PUBLIC-PRIVATE COMPETI-  
10          TION FOR NEW FUNCTIONS.—

11           (1) IN GENERAL.—No later than 5 years after  
12           the date of enactment of this Act, not less than one-  
13           half of the funds expended each fiscal year by an  
14           agency for the performance by contractors of func-  
15           tions that are not performed by Federal employees  
16           or contractors of the agency on the date of enact-  
17           ment of this Act shall be expended for contracts that  
18           are awarded after completion of public-private com-  
19           petitions in accordance with this section.

20           (2) EXPIRATION.—The application of para-  
21           graph (1) to an agency expires upon the earlier of  
22           the following:

23           (A) The end of the first full fiscal year be-  
24           ginning after the date of enactment of this Act  
25           during which not less than one-half of the funds

1           expended by the agency for the performance of  
2           new functions are expended after completion of  
3           public-private competitions.

4                   (B) The end of the fifth full fiscal year be-  
5           ginning after enactment of this Act.

6           (d) **INAPPLICABILITY TO SUBJECT NEW FUNCTIONS**  
7 **TO PUBLIC-PRIVATE COMPETITION.**—This section does  
8 not apply to—

9                   (1) functions performed by contractors before  
10          the date of enactment of this Act; or

11                   (2) any contract with a value less than  
12          \$1,000,000, if—

13                           (A) the functions to be performed under  
14          the contract are not divided, modified, or in any  
15          way changed in a manner that results in this  
16          section not applying to the contracting for those  
17          functions; and

18                           (B) the contract is awarded to one or more  
19          small business concerns that meet the require-  
20          ments under section 3(a) of the Small Business  
21          Act (15 U.S.C. 632(a)) and regulations under  
22          that section.

23 **SEC. 8. REVIEW OF CONTRACTOR PERFORMANCE.**

24           (a) **IN GENERAL.**—

1           (1) AGENCY ACTION AFTER REVIEW.—If a re-  
2           port completed under section 5 indicates that, for 2  
3           consecutive years, the actual cost of contractor per-  
4           formance of a particular function exceeds the antici-  
5           pated cost, based on the award (referred to in sec-  
6           tion 5(b)(3)(G)), after adjustment for changes in the  
7           scope of work, inflation, and wage rates, or fails to  
8           substantially meet quality control standards (re-  
9           ferred to in section 5(b)(3)(J)), the agency shall  
10          conduct a new public-private competition not later  
11          than the earlier of the date of the expiration of the  
12          contract or the beginning of the first fiscal year that  
13          is not more than 12 months after the initial deter-  
14          mination that the cost of a contracting effort ex-  
15          ceeds the anticipated cost of contractor performance  
16          or that quality standards have not been substantially  
17          met. Any resulting terminations for convenience may  
18          be undertaken without cost to the United States  
19          Government.

20          (2) INAPPLICABILITY.—This subsection does  
21          not apply to work performed by contractors before  
22          the date of enactment of this Act.

23          (b) COMPARABLE PUBLIC-PRIVATE COMPETITION.—

24                (1) IN GENERAL.—No later than in the fifth  
25                year after the date of enactment of this Act, an

1 agency shall subject to public-private competition  
2 annually approximately the same number of Federal  
3 employee positions and positions held by contractor  
4 employees.

5 (2) EXPIRATION.—The requirement for com-  
6 parable public-private competition expires upon the  
7 earlier of the following:

8 (A) The end of the first full fiscal year be-  
9 ginning after the date of enactment of this Act  
10 during which an agency subjects to public-pri-  
11 vate competition an approximate number of  
12 Federal employee positions and positions held  
13 by contractor employees.

14 (B) The end of the fifth full fiscal year be-  
15 ginning after enactment of this Act.

16 (c) PUBLIC-PRIVATE COMPETITION PROCESS FOR  
17 FUNCTIONS PERFORMED BY CONTRACTORS.—After the  
18 date of enactment of this Act, any decision by an agency  
19 to initiate a contracting in for the performance of a func-  
20 tion not previously performed by Federal employees, in ac-  
21 cordance with this subsection, shall be based on the results  
22 of a public-private competition process that—

23 (1) formally compares the costs of Federal em-  
24 ployee performance of the new function with the  
25 costs of the performance by a contractor;

1           (2) determines whether the offers submitted  
2 meet the needs of the agency with respect to items  
3 other than costs, including quality and reliability;

4           (3) employs the most efficient organization  
5 process;

6           (4) does not include in the cost comparison any  
7 savings to the agency attributable to lower pay,  
8 health insurance benefits, or retirement benefits pro-  
9 vided by the contractor; and

10           (5) ensures continued performance of the func-  
11 tion by a contractor if an agency determines that at  
12 least a 10-percent cost savings would not be  
13 achieved by performance of the function by Federal  
14 employees.

15           (d) PARTICULAR FUNCTIONS.—In complying with  
16 this subsection—

17           (1) agencies shall, to the extent possible, sub-  
18 ject to public-private competition those positions  
19 held by contractor employees that are associated  
20 with functions that are or have been performed at  
21 least in part by Federal employees at any time on  
22 or after October 1, 1980; and

23           (2) agencies shall not receive credit towards  
24 compliance with the requirement for comparable

1 public-private competition for subjecting to public-  
2 private competition any contractor employees—

3 (A) associated with functions performed by  
4 small business concerns that meet the require-  
5 ments under section 3(a) of the Small Business  
6 Act (15 U.S.C. 632(a)) and regulations under  
7 that section; or

8 (B) whose minimum monetary wages and  
9 fringe benefits are based on 4(c) of the Service  
10 Contract Act (41 U.S.C. 353(e)), or whose min-  
11 imum monetary wages and fringe benefits will  
12 become covered by section 4(c) of the Service  
13 Contract Act at the beginning of the next con-  
14 tract year.

15 (e) INAPPLICABILITY OF CERTAIN LIMITATION.—  
16 Notwithstanding any limitation on the number of Federal  
17 employees established by law, regulation, or policy, an  
18 agency may continue to employ or may hire such Federal  
19 employees as are necessary to perform work acquired  
20 through public-private competition required by this sec-  
21 tion.

22 **SEC. 9. COMPTROLLER GENERAL REPORTS.**

23 The Comptroller General shall report to the Com-  
24 mittee on Government Reform of the House of Represent-  
25 atives and the Committee on Governmental Affairs of the

1 Senate annually on the compliance by agencies with the  
2 requirements of this Act.

3 **SEC. 10. REPEAL OF CERTAIN REPORTING REQUIREMENTS.**

4 (a) IN GENERAL.—Sections 2461, 2461a, 2463, and  
5 2467(c) of title 10, United States Code, are repealed.

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 The table of sections for chapter 141 of title 10, United  
8 States Code, is amended by striking the items relating to  
9 sections 2461, 2461a, and 2463.

10 **SEC. 11. APPLICABILITY.**

11 This Act does not apply with respect to the following:

12 (1) The General Accounting Office.

13 (2) Depot-level maintenance and repair of the  
14 Department of Defense (as defined in section 2460  
15 of title 10, United States Code).

16 (3) Contracts for the construction of new struc-  
17 tures or the remodeling of or additions made to ex-  
18 isting structures, facilities, and capital projects, ex-  
19 cept this Act shall apply to contracts for services re-  
20 lated to the repair and maintenance of any struc-  
21 tures.

22 (4) Financial assistance awards (including  
23 grants and cooperative agreements).

1 **SEC. 12. WAIVERS FROM PUBLIC-PRIVATE COMPETITION**  
2 **REQUIREMENTS FOR REASON OF NATIONAL**  
3 **SECURITY AND HOMELAND SECURITY.**

4 (a) IN GENERAL.—The Secretary of Defense and the  
5 Secretary of Homeland Security may each, with respect  
6 to their department, waive the application of the public-  
7 private competition requirements of sections 6, 7, and 8  
8 of this Act, on a case-by-case basis, for specific functions  
9 if—

10 (1) the waiver is prepared in writing—

11 (A) by the Secretary of Defense, or an As-  
12 sistant Secretary of Defense, in the case of a  
13 national security waiver for the Department of  
14 Defense; or

15 (B) by the Secretary of Homeland Secu-  
16 rity, or an Assistant Secretary of Homeland Se-  
17 curity, in the case of a homeland security waiv-  
18 er for the Department of Homeland Security;

19 (2) the written waiver is accompanied by a de-  
20 tailed determination that national security or home-  
21 land security interests, respectively, are so compel-  
22 ling as to preclude compliance with the require-  
23 ments; and

24 (3) a copy of the waiver is published in the  
25 Federal Register, although use of the waiver need  
26 not be delayed until its publication.

1           (b) SUSPENSION OF INCREMENTAL REQUIRE-  
2 MENTS.—The Secretary of Defense and the Secretary of  
3 Homeland Security may each, with respect to their depart-  
4 ment, temporarily suspend either or both of the require-  
5 ments for incremental public-private competition for new  
6 work (as established in section 7) and incremental public-  
7 private competition for contractor work (as established in  
8 section 8) with respect to the functions of their depart-  
9 ment if—

10           (1) the determination to suspend is prepared in  
11 writing—

12           (A) by the Secretary of Defense, in the  
13 case of a national security suspension for the  
14 Department of Defense; or

15           (B) by the Secretary of Homeland Secu-  
16 rity, in the case of a homeland security suspen-  
17 sion for the Department of Homeland Security;

18           (2) the written determination to suspend is ac-  
19 companied by a detailed determination that national  
20 security or homeland security interests, respectively,  
21 are so compelling as to preclude compliance with the  
22 requirements; and

23           (3) a copy of the determination to suspend is  
24 published in the Federal Register, although use of  
25 the waiver need not be delayed until its publication.

1 (c) DURATION.—The duration of a temporary sus-  
2 pension under subsection (b) shall be no longer than the  
3 1-year period beginning on the date it is first invoked  
4 (without regard to the date it is first published).

5 (d) SUBSEQUENT SUSPENSIONS.—The Secretaries of  
6 Defense and Homeland Security may issue additional tem-  
7 porary suspensions. During the period of such suspen-  
8 sions, the expiration dates under sections 7(c)(2) and  
9 8(b)(2), as applicable, are tolled, and the effective period  
10 of such suspensions shall not be counted toward the fifth  
11 fiscal year milestones under sections 7(c)(2)(B) and  
12 8(b)(2)(B), as applicable.

13 **SEC. 13. LIMITED PILOT PROGRAM TO IMPLEMENT REC-**  
14 **COMMENDATIONS OF COMMERCIAL ACTIVI-**  
15 **TIES PANEL.**

16 (a) USE OF ALTERNATIVE PUBLIC-PRIVATE COM-  
17 PETITION PROCESSES.—The Director of the Office of  
18 Management and Budget, in coordination with the heads  
19 of agencies, may carry out a limited pilot program to ex-  
20 amine and evaluate the feasibility and advisability of using  
21 public-private competition processes other than the proc-  
22 ess described in Office of Management and Budget Cir-  
23 cular A-76 for functions performed for agencies other  
24 than the Department of Defense (or any military depart-  
25 ment or agency thereof) by Federal employees or contrac-

1 tors, or proposed for performance for such agencies by  
2 Federal employees or contractors.

3 (b) DURATION OF PILOT PROGRAM.—The Director  
4 of the Office of Management and Budget may carry out  
5 the pilot program during fiscal years 2003 through 2005.

6 (c) EXTENT OF PILOT PROGRAM.—The total value  
7 of the functions reviewed under the pilot program may not  
8 exceed \$300,000,000.

9 (d) POSSIBLE ALTERNATIVES.—

10 (1) IN GENERAL.—The alternatives to Office of  
11 Management Budget Circular A-76 that could be  
12 tested and evaluated by the pilot program include  
13 only the following:

14 (A) The process known as low-price/tech-  
15 nically acceptable (under the framework of the  
16 Federal Acquisition Regulation).

17 (B) The process known as cost/technical  
18 trade off (under the framework of the Federal  
19 Acquisition Regulation).

20 (C) The process known as bid-to-goal.

21 (2) BID-TO-GOAL DEFINED.—In paragraph  
22 (1)(C), the term “bid-to-goal” means a process  
23 that—

24 (A) uses a series of competitive perform-  
25 ance targets, included in a performance work

1 statement, to compare for specific functions the  
2 cost of public sector performance with the cost  
3 of performance by private sector contractors  
4 and other public sector entities at the Federal,  
5 State, and local levels; and

6 (B) allows managers and affected employ-  
7 ees to create streamlined and improved work  
8 plans that, if determined to be viable by an  
9 independent party, are incorporated into a de-  
10 tailed service agreement awarded to the public  
11 sector entity for implementation and perform-  
12 ance of the functions.

13 (e) REQUIRED ELEMENTS.—The alternatives exam-  
14 ined and evaluated under the framework of the Federal  
15 Acquisition Regulation shall include—

16 (1) the most efficient organization process;

17 (2) the framework for calculating the public  
18 sector price cost estimate;

19 (3) the framework for calculating the evaluated  
20 price for private sector proposals to take into ac-  
21 count costs such as contract administration costs;  
22 and

23 (4) the 10-percent cost differential in favor of  
24 whichever sector is currently performing the work,  
25 as described in Office of Management and Budget

1       Circular A-76 or any successor administrative regu-  
2       lation.

3       (f) COMPARABILITY.—To the maximum extent prac-  
4       ticable, the Director of the Office of Management and  
5       Budget shall ensure that comparable amounts of work, as  
6       measured in dollars, performed by Federal employees, per-  
7       formed by contractors, or new work that is not yet per-  
8       formed by Federal employees or contractors should be  
9       tested and evaluated under the alternatives authorized for  
10      the pilot program.

11      (g) RELATION TO A-76 PROCESS.—In order to pro-  
12      vide proper test and evaluation conditions for the pilot  
13      program, functions designated for study under the pilot  
14      program shall be exempt for the duration of the pilot pro-  
15      gram from review initiated under Office of Management  
16      and Budget Circular A-76 or any successor administrative  
17      regulation, and no function that has been announced for  
18      or is undergoing such a review shall be selected for the  
19      pilot program.

20      (h) LIMITATION.—With respect to the Department of  
21      Defense and agencies in such department, no alternatives  
22      may be used under the pilot project established by this  
23      Act that would be contrary to sections 129a and 2462 of  
24      title 10, United States Code.

25      (i) CONSULTATION.—

1           (1) IN GENERAL.—The officer or Federal em-  
2           ployee of an agency responsible for determining,  
3           under the alternatives authorized for the pilot pro-  
4           gram by subsection (d), whether to convert a func-  
5           tion from Federal employee performance to con-  
6           tractor performance or from contractor performance  
7           to Federal employee performance—

8                   (A) shall, at least monthly during the de-  
9                   velopment and preparation of the performance  
10                  work statement and the management efficiency  
11                  study used in making that determination, con-  
12                  sult with Federal employees or contractor em-  
13                  ployees who will be affected by that determina-  
14                  tion and consider the views of such employees  
15                  on the development and preparation of that  
16                  statement and that study; and

17                  (B) may consult with such employees or  
18                  contractors on other matters relating to that  
19                  determination.

20           (2) FEDERAL EMPLOYEES REPRESENTED BY  
21           RECOGNIZED LABOR ORGANIZATION.—In the case of  
22           Federal employees represented by a labor organiza-  
23           tion accorded exclusive recognition under section  
24           7111 of title 5, United States Code, consultation  
25           with representatives of that labor organization shall

1 satisfy the consultation requirements of paragraph  
2 (1).

3 (3) CONTRACTOR EMPLOYEES.—In the case of  
4 contractor employees, consultation with appropriate  
5 representatives of those employees (including appro-  
6 priate labor organizations representing such Federal  
7 employees) shall satisfy the consultation require-  
8 ments of paragraph (1) with respect to those em-  
9 ployees.

10 (j) REPORTING REQUIREMENTS.—

11 (1) IN GENERAL.—Not later than 90 days after  
12 the end of each fiscal year in which the pilot pro-  
13 gram is conducted, the Director of the Office of  
14 Management and Budget and the Comptroller Gen-  
15 eral of the United States shall each submit to the  
16 Congress a report of the results of the pilot program  
17 and lessons learned. For each function covered by  
18 the program, the report shall address the following  
19 factors:

20 (A) The cost of conducting each alternative  
21 tested under the pilot program with respect to  
22 that function.

23 (B) The time necessary to conduct the al-  
24 ternative.

1           (C) The savings, if any, expected to be  
2           achieved from conducting the alternative.

3           (D) The savings, if any, actually achieved  
4           from conducting the alternative.

5           (E) The gains in efficiency or effectiveness,  
6           if any, expected to be achieved from conducting  
7           the alternative.

8           (F) The gains in efficiency or effectiveness,  
9           if any, actually achieved from conducting the al-  
10          ternative.

11          (G) The impact on Federal employees and  
12          contractors (and contractor employees) from  
13          conducting the alternative.

14          (2) COMPARISON.—To the maximum extent  
15          possible, the report shall compare each alternative  
16          undertaking, with respect to the factors specified in  
17          paragraph (1), with an undertaking of Office of  
18          Management and Budget Circular A-76 that has  
19          been completed within at least 2 years prior to the  
20          date of the enactment of this Act for work that is  
21          comparable in nature and scope.

22          (3) RECOMMENDATIONS.—The final report  
23          shall include recommended changes with respect to  
24          implementation of policies and proposed legislation.

1           (k) REGULATIONS.—The Director of the Office of  
2 Management and Budget shall prescribe such regulations  
3 as the Director considers necessary to carry out the pilot  
4 program.

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