

108TH CONGRESS  
2D SESSION

# H. R. 4228

To provide for an improved acquisition system.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2004

Mr. TOM DAVIS of Virginia (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for an improved acquisition system.

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 “Acquisition System Improvement Act”.

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

Sec. 1. Short title; table of contents.

### TITLE I—ACQUISITION IMPROVEMENTS

Sec. 101. Government-industry exchange program.

Sec. 102. Share-in-savings initiatives.

- Sec. 103. Inflation adjustment for acquisition-related dollar thresholds.
- Sec. 104. Agency acquisition protests.
- Sec. 105. Extension of authority for use of simplified acquisition procedures.
- Sec. 106. Redundancy in procurement of telecommunications services.

TITLE II—CONTRACT DISPUTE ENHANCEMENT

Subtitle A—General Provisions

Sec. 211. Definitions.

Subtitle B—Establishment of Civilian and Defense Boards of Contract Appeals

- Sec. 221. Establishment.
- Sec. 222. Membership.
- Sec. 223. Chairmen.
- Sec. 224. Rulemaking authority.
- Sec. 225. Authorization of appropriations.

Subtitle C—Functions of Defense and Civilian Boards of Contract Appeals

- Sec. 231. Contract disputes.
- Sec. 232. Enhanced access for small business.
- Sec. 233. Applicability to certain contracts.

Subtitle D—Transfers and Transition, Savings, and Conforming Provisions

- Sec. 241. Transfer and allocation of appropriations and personnel.
- Sec. 242. Terminations and savings provisions.
- Sec. 243. Contract disputes authority of Boards.
- Sec. 244. References to agency Boards of contract appeals.
- Sec. 245. Conforming amendments.

Subtitle E—Effective Date; Regulations and Appointment of Chairmen

- Sec. 251. Effective date.
- Sec. 252. Regulations.
- Sec. 253. Appointment of Chairmen of Defense Board and Civilian Board.

1                   **TITLE I—ACQUISITION**  
 2                   **IMPROVEMENTS**

3 **SEC. 101. GOVERNMENT-INDUSTRY EXCHANGE PROGRAM.**

4           (a) IN GENERAL.—Subpart B of part III of title 5,  
 5 United States Code, is amended by adding at the end the  
 6 following:

1                   **“CHAPTER 38—ACQUISITION**  
2                   **PROFESSIONAL EXCHANGE PROGRAM**

“Sec.

“3801. Definitions.

“3802. General provisions.

“3803. Assignment of employees to private sector organizations.

“3804. Assignment of employees from private sector organizations.

“3805. Reporting requirement.

“3806. Regulations.

3                   **“§ 3801. Definitions**

4                   “For purposes of this chapter—

5                   ““(1) the term ‘agency’—

6                   ““(A) subject to subparagraph (B), means  
7                   an executive agency; and

8                   ““(B) does not include—

9                   ““(i) the General Accounting Office;

10                  ““(ii) an Office of Inspector General of  
11                  an establishment or a designated Federal  
12                  entity established under the Inspector Gen-  
13                  eral Act of 1978; and

14                  ““(iii) the Defense Contract Audit  
15                  Agency referred to in section 2313(b) of  
16                  title 10; and

17                  ““(2) the term ‘detail’ means—

18                  ““(A) the assignment or loan of an em-  
19                  ployee of an agency to a private sector organi-  
20                  zation without a change of position from the  
21                  agency that employs the individual, or

1           “(B) the assignment or loan of an em-  
2           ployee of a private sector organization to an  
3           agency without a change of position from the  
4           private sector organization that employs the in-  
5           dividual,

6           whichever is appropriate in the context in which  
7           such term is used.

8   **“§ 3802. General provisions**

9           “(a) ASSIGNMENT AUTHORITY.—On request from or  
10          with the agreement of a private sector organization, and  
11          with the consent of the employee concerned, the head of  
12          an agency may arrange for the assignment of an employee  
13          of the agency to a private sector organization or an em-  
14          ployee of a private sector organization to the agency. An  
15          eligible employee is an individual who—

16               “(1) works in the field of Federal acquisition or  
17               acquisition management;

18               “(2) is considered an exceptional performer by  
19               the individual’s current employer; and

20               “(3) is expected to assume increased acquisition  
21               management responsibilities in the future.

22          An employee of an agency shall be eligible to participate  
23          in this program only if the employee is employed at the  
24          GS–11 level or above (or equivalent) and is serving under

1 a career or career-conditional appointment or an appoint-  
2 ment of equivalent tenure in the excepted service.

3 “(b) AGREEMENTS.—Each agency that exercises its  
4 authority under this chapter shall provide for a written  
5 agreement between the agency and the employee con-  
6 cerned regarding the terms and conditions of the employ-  
7 ee’s assignment. In the case of an employee of the agency,  
8 the agreement shall—

9 “(1) require the employee to serve in the civil  
10 service, upon completion of the assignment, for a pe-  
11 riod equal to the length of the assignment; and

12 “(2) provide that, in the event the employee  
13 fails to carry out the agreement (except for good and  
14 sufficient reason, as determined by the head of the  
15 agency from which assigned) the employee shall be  
16 liable to the United States for payment of all ex-  
17 penses of the assignment.

18 An amount under paragraph (2) shall be treated as a debt  
19 due the United States.

20 “(c) TERMINATION.—Assignments may be termi-  
21 nated by the agency or private sector organization con-  
22 cerned for any reason at any time.

23 “(d) DURATION.—Assignments under this chapter  
24 shall be for a period of between 6 months and 1 year,  
25 and may be extended in 3-month increments for a total

1 of not more than 1 additional year, except that no assign-  
2 ment under this chapter may commence after the end of  
3 the 5-year period beginning on the date of the enactment  
4 of this chapter.

5       “(e) ASSISTANCE.—The Administrator for Federal  
6 Procurement Policy, by agreement with the Office of Per-  
7 sonnel Management, may assist in the administration of  
8 this chapter, including by maintaining lists of potential  
9 candidates for assignment under this chapter, establishing  
10 mentoring relationships for the benefit of individuals who  
11 are given assignments under this chapter, and publicizing  
12 the program.

13       “(f) CONSIDERATIONS.—In exercising any authority  
14 under this chapter, an agency shall take into consider-  
15 ation—

16               “(1) the need to ensure that small business con-  
17 cerns are appropriately represented with respect to  
18 the assignments described in sections 3803 and  
19 3804, respectively; and

20               “(2) how assignments described in section 3803  
21 might best be used to help meet the needs of the  
22 agency for the training of employees in acquisition  
23 management.

1 **“§ 3803. Assignment of employees to private sector or-**  
2 **ganizations**

3 “(a) IN GENERAL.—An employee of an agency as-  
4 signed to a private sector organization under this chapter  
5 is deemed, during the period of the assignment, to be on  
6 detail to a regular work assignment in his agency.

7 “(b) COORDINATION WITH CHAPTER 81.—Notwith-  
8 standing any other provision of law, an employee of an  
9 agency assigned to a private sector organization under this  
10 chapter is entitled to retain coverage, rights, and benefits  
11 under subchapter I of chapter 81, and employment during  
12 the assignment is deemed employment by the United  
13 States, except that, if the employee or the employee’s de-  
14 pendants receive from the private sector organization any  
15 payment under an insurance policy for which the premium  
16 is wholly paid by the private sector organization, or other  
17 benefit of any kind on account of the same injury or death,  
18 then, the amount of such payment or benefit shall be cred-  
19 ited against any compensation otherwise payable under  
20 subchapter I of chapter 81.

21 “(c) REIMBURSEMENTS.—The assignment of an em-  
22 ployee to a private sector organization under this chapter  
23 may be made with or without reimbursement by the pri-  
24 vate sector organization for the travel and transportation  
25 expenses to or from the place of assignment, subject to  
26 the same terms and conditions as apply with respect to

1 an employee of a Federal agency or a State or local gov-  
2 ernment under section 3375, and for the pay, or a part  
3 thereof, of the employee during assignment. Any reim-  
4 bursements shall be credited to the appropriation of the  
5 agency used for paying the travel and transportation ex-  
6 penses or pay.

7 “(d) TORT LIABILITY; SUPERVISION.—The Federal  
8 Tort Claims Act and any other Federal tort liability stat-  
9 ute apply to an employee of an agency assigned to a pri-  
10 vate sector organization under this chapter. The super-  
11 vision of the duties of an employee of an agency so as-  
12 signed to a private sector organization may be governed  
13 by an agreement between the agency and the organization.

14 “(e) SMALL BUSINESS CONCERNS.—

15 “(1) IN GENERAL.—The head of each agency  
16 shall take such actions as may be necessary to en-  
17 sure that, of the assignments made under this chap-  
18 ter from such agency to private sector organizations  
19 in each year, at least 20 percent are to small busi-  
20 ness concerns.

21 “(2) DEFINITIONS.—For purposes of this sub-  
22 section—

23 “(A) the term ‘small business concern’  
24 means a business concern that satisfies the  
25 definitions and standards specified by the Ad-

1 administrator of the Small Business Administra-  
2 tion under section 3(a)(2) of the Small Busi-  
3 ness Act (as from time to time amended by the  
4 Administrator);

5 “(B) the term ‘year’ refers to the 12-  
6 month period beginning on the date of the en-  
7 actment of this chapter, and each succeeding  
8 12-month period in which any assignments  
9 under this chapter may be made; and

10 “(C) the assignments ‘made’ in a year are  
11 those commencing in such year.

12 “(3) REPORTING REQUIREMENT.—An agency  
13 which fails to comply with paragraph (1) in a year  
14 shall, within 90 days after the end of such year, sub-  
15 mit a report to the Committees on Government Re-  
16 form and Small Business of the House of Represent-  
17 atives and the Committees on Governmental Affairs  
18 and Small Business of the Senate. The report shall  
19 include—

20 “(A) the total number of assignments  
21 made under this chapter from such agency to  
22 private sector organizations in the year;

23 “(B) of that total number, the number  
24 (and percentage) made to small business con-  
25 cerns; and

1           “(C) the reasons for the agency’s non-  
2           compliance with paragraph (1).

3           “(4) EXCLUSION.—This subsection shall not  
4           apply to an agency in any year in which it makes  
5           fewer than 5 assignments under this chapter to pri-  
6           vate sector organizations.

7   **“§ 3804. Assignment of employees from private sector**  
8           **organizations**

9           “(a) IN GENERAL.—An employee of a private sector  
10          organization assigned to an agency under this chapter is  
11          deemed, during the period of the assignment, to be on de-  
12          tail to such agency.

13          “(b) TERMS AND CONDITIONS.—An employee of a  
14          private sector organization assigned to an agency under  
15          this chapter—

16                 “(1) may continue to receive pay and benefits  
17                 from the private sector organization from which he  
18                 is assigned;

19                 “(2) is deemed, notwithstanding subsection (a),  
20                 to be an employee of the agency for the purposes  
21                 of—

22                         “(A) chapter 73;

23                         “(B) sections 201, 203, 205, 207, 208,  
24                         209, 603, 606, 607, 643, 654, 1905, and 1913  
25                         of title 18;

1           “(C) sections 1343, 1344, and 1349(b) of  
2 title 31;

3           “(D) the Federal Tort Claims Act and any  
4 other Federal tort liability statute;

5           “(E) the Ethics in Government Act of  
6 1978;

7           “(F) section 1043 of the Internal Revenue  
8 Code of 1986; and

9           “(G) section 27 of the Office of Federal  
10 Procurement Policy Act;

11          “(3) may not have access to any trade secrets  
12 or to any other nonpublic information which is of  
13 commercial value to the private sector organization  
14 from which he is assigned; and

15          “(4) is subject to such regulations as the Presi-  
16 dent may prescribe.

17 The supervision of an employee of a private sector organi-  
18 zation assigned to an agency under this chapter may be  
19 governed by agreement between the agency and the private  
20 sector organization concerned. Such an assignment may  
21 be made with or without reimbursement by the agency for  
22 the pay, or a part thereof, of the employee during the pe-  
23 riod of assignment, or for any contribution of the private  
24 sector organization to employee benefit systems.

1       “(c) COORDINATION WITH CHAPTER 81.—An em-  
2 ployee of a private sector organization assigned to an  
3 agency under this chapter who suffers disability or dies  
4 as a result of personal injury sustained while performing  
5 duties during the assignment shall be treated, for the pur-  
6 pose of subchapter I of chapter 81, as an employee as de-  
7 fined by section 8101 who had sustained the injury in the  
8 performance of duty, except that, if the employee or the  
9 employee’s dependents receive from the private sector or-  
10 ganization any payment under an insurance policy for  
11 which the premium is wholly paid by the private sector  
12 organization, or other benefit of any kind on account of  
13 the same injury or death, then, the amount of such pay-  
14 ment or benefit shall be credited against any compensation  
15 otherwise payable under subchapter I of chapter 81.

16       “(d) PROHIBITION AGAINST CHARGING CERTAIN  
17 COSTS TO THE FEDERAL GOVERNMENT.—A private sec-  
18 tor organization may not charge the Federal Government,  
19 as direct or indirect costs under a Federal contract, the  
20 costs of pay or benefits paid by the organization to an  
21 employee assigned to an agency under this chapter for the  
22 period of the assignment.

23 **“§ 3805. Reporting requirement**

24       “(a) IN GENERAL.—The Office of Personnel Manage-  
25 ment shall, not later than April 30 and October 31 of each

1 year, prepare and submit to the Committee on Govern-  
2 ment Reform of the House of Representatives and the  
3 Committee on Governmental Affairs of the Senate a semi-  
4 annual report summarizing the operation of this chapter  
5 during the immediately preceding 6-month period ending  
6 on March 31 and September 30, respectively.

7 “(b) CONTENT.—Each report shall include, with re-  
8 spect to the 6-month period to which such report relates—

9 “(1) the total number of individuals assigned  
10 to, and the total number of individuals assigned  
11 from, each agency during such period;

12 “(2) a brief description of each assignment in-  
13 cluded under paragraph (1), including—

14 “(A) the name of the assigned individual,  
15 as well as the private sector organization and  
16 the agency (including the specific bureau or  
17 other agency component) to or from which such  
18 individual was assigned;

19 “(B) the respective positions to and from  
20 which the individual was assigned, including the  
21 duties and responsibilities and the pay grade or  
22 level associated with each; and

23 “(C) the duration and objectives of the in-  
24 dividual’s assignment; and

1           “(3) such other information as the Office con-  
2           siders appropriate.

3           “(c) PUBLICATION.—A copy of each report submitted  
4 under subsection (a)—

5           “(1) shall be published in the Federal Register;  
6           and

7           “(2) shall be made publicly available on the  
8           Internet.

9           “(d) AGENCY COOPERATION.—On request of the Of-  
10 fice, agencies shall furnish such information and reports  
11 as the Office may require in order to carry out this sec-  
12 tion.

13 **“§ 3806. Regulations**

14           “The Director of the Office of Personnel Manage-  
15 ment shall prescribe regulations for the administration of  
16 this chapter.”.

17           (b) REPORT.—Not later than 4 years after the date  
18 of the enactment of this Act, the General Accounting Of-  
19 fice shall prepare and submit to the Committee on Govern-  
20 ment Reform of the House of Representatives and the  
21 Committee on Governmental Affairs of the Senate a report  
22 on the operation of chapter 38 of title 5, United States  
23 Code (as added by this section). Such report shall in-  
24 clude—

1 (1) an evaluation of the effectiveness of the pro-  
2 gram established by such chapter; and

3 (2) a recommendation as to whether such pro-  
4 gram should be continued (with or without modifica-  
5 tion) or allowed to lapse.

6 (c) CLERICAL AMENDMENT.—The table of chapters  
7 at the beginning of part III of title 5, United States Code,  
8 is amended by inserting after the item relating to chapter  
9 37 the following:

**“38. Acquisition Professional Exchange Program ..... 3801”.**

10 (d) COORDINATION WITH ACQUISITION WORKFORCE  
11 PROVISIONS OF OFFICE OF FEDERAL PROCUREMENT  
12 POLICY ACT.—Section 37 of the Office of Federal Pro-  
13 curement Policy Act (41 U.S.C. 433) is amended by add-  
14 ing at the end the following new subsection:

15 “(i) AUTHORITY TO DETAIL EMPLOYEES TO NON-  
16 FEDERAL EMPLOYERS.—(1) In carrying out the provi-  
17 sions of this section, the Administrator, by agreement with  
18 the Director of the Office of Personnel Management, may  
19 provide for a program under which a Federal employee  
20 may be detailed to a non-Federal employer. The Adminis-  
21 trator, by agreement with the Director of the Office of  
22 Personnel Management, shall prescribe regulations for  
23 such program, including the conditions for service and du-  
24 ties as the Administrator considers necessary.

1       “(2) An assignment described in section 3803 of title  
2 5, United States Code, may not be made unless a program  
3 under paragraph (1) is established, and the assignment  
4 is made in accordance with the requirements of such pro-  
5 gram.”.

6       (e) ETHICS PROVISIONS.—

7           (1) ONE-YEAR RESTRICTION ON CERTAIN COM-  
8 MUNICATIONS.—Section 207(e)(2)(A)(v) of title 18,  
9 United States Code, is amended by inserting “or  
10 38” after “chapter 37”.

11          (2) DISCLOSURE OF CONFIDENTIAL INFORMA-  
12 TION.—Section 1905 of title 18, United States Code,  
13 is amended by inserting “or 38” after “chapter 37”.

14          (3) CONTRACT ADVICE.—Section 207(l) of title  
15 18, United States Code, is amended—

16           (A) in the subsection heading, by striking  
17 “DETAILS.—” and inserting “DETAILEES.—”;  
18 and

19           (B) by inserting “or 38” after “chapter  
20 37”.

21          (4) RESTRICTION ON DISCLOSURE OF PRO-  
22 CUREMENT INFORMATION.—Section 27 of the Office  
23 of Federal Procurement Policy Act (41 U.S.C. 423)  
24 is amended in the last sentence of subsection (a)(1)  
25 by inserting “or 38” after “chapter 37”.

1 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) AMENDMENTS TO TITLE 5, UNITED STATES  
3 CODE.—Title 5, United States Code, is amended—

4 (A) in section 3111(d), by inserting “or  
5 38” after “chapter 37”; and

6 (B) in section 7353(b)(4), by inserting “or  
7 38” after “chapter 37”.

8 (2) AMENDMENT TO TITLE 18, UNITED STATES  
9 CODE.—Section 209(g) of title 18, United States  
10 Code, is amended—

11 (A) in paragraph (1), by inserting “or 38”  
12 after “chapter 37”; and

13 (B) by amending paragraph (2) to read as  
14 follows:

15 “(2) For purposes of this subsection, the term ‘agen-  
16 cy’—

17 “(A) with respect to assignments under chapter  
18 37 of title 5, means an agency (as defined in section  
19 3701 of title 5) and the Office of the Chief Tech-  
20 nology Officer of the District of Columbia; and

21 “(B) with respect to assignments under chapter  
22 38 of title 5, means an agency (as defined by section  
23 3801 of title 5).”.

24 (3) ELIGIBILITY FOR THRIFT SAVINGS PLAN.—  
25 Section 125(c)(1)(D) of Public Law 100–238 (101

1 Stat. 1757; 5 U.S.C. 8432 note) is amended by in-  
2 serting “or 38” after “chapter 37”.

3 **SEC. 102. SHARE-IN-SAVINGS INITIATIVES.**

4 (a) DEFENSE CONTRACTS.—Section 2332 of title 10,  
5 United States Code, is amended to read as follows:

6 **“§ 2332. Share-in-savings contracts**

7 “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-  
8 INGS CONTRACTS.—(1) The head of an agency may enter  
9 into a share-in-savings contract in which the Government  
10 awards a contract to improve mission-related or adminis-  
11 trative processes or to accelerate the achievement of its  
12 mission and share with the contractor in savings achieved  
13 through contract performance.

14 “(2)(A) Except as provided in subparagraph (B), a  
15 share-in-savings contract shall be awarded for a period of  
16 not more than five years.

17 “(B) A share-in-savings contract may be awarded for  
18 a period greater than five years, but not more than 10  
19 years, if the head of the agency determines in writing prior  
20 to award of the contract that—

21 “(i) the level of risk to be assumed and the in-  
22 vestment to be undertaken by the contractor is likely  
23 to inhibit the government from obtaining the needed  
24 performance competitively at a fair and reasonable

1 price if the contract is limited in duration to a pe-  
2 riod of five years or less; and

3 “(ii) the performance to be acquired is likely to  
4 continue for a period of time sufficient to generate  
5 reasonable benefit for the government.

6 “(3) Contracts awarded pursuant to the authority of  
7 this section shall, to the maximum extent practicable, be  
8 performance-based contracts that identify objective out-  
9 comes and contain performance standards that will be  
10 used to measure achievement and milestones that must  
11 be met before payment is made.

12 “(4) Contracts awarded pursuant to the authority of  
13 this section shall include a provision containing a quantifi-  
14 able baseline that is to be the basis upon which a savings  
15 share ratio is established that governs the amount of pay-  
16 ment a contractor is to receive under the contract. Before  
17 commencement of performance of such a contract, the  
18 chief acquisition officer of the agency, or, in the case of  
19 an agency without a chief acquisition officer, the senior  
20 procurement executive, shall determine in writing that the  
21 terms of the provision are quantifiable and will likely yield  
22 value to the Government.

23 “(5)(A) The head of the agency may retain savings  
24 realized through the use of a share-in-savings contract  
25 under this section that are in excess of the total amount

1 of savings paid to the contractor under the contract. Ex-  
2 cept as provided in subparagraph (B), savings shall be  
3 credited to the appropriation or fund against which  
4 charges were made to carry out the contract.

5 “(B) Amounts retained by the agency under this sub-  
6 section shall—

7 “(i) without further appropriation, remain  
8 available until expended; and

9 “(ii) be applied first to fund any contingent li-  
10 abilities associated with share-in-savings procure-  
11 ments that are not fully funded.

12 “(b) CANCELLATION AND TERMINATION.—(1) If  
13 funds are not made available for the continuation of a  
14 share-in-savings contract entered into under this section  
15 in a subsequent fiscal year, the contract shall be canceled  
16 or terminated. The costs of cancellation or termination  
17 may be paid out of—

18 “(A) appropriations available for the perform-  
19 ance of the contract;

20 “(B) appropriations available for acquisition of  
21 the type of property or services procured under the  
22 contract, and not otherwise obligated; or

23 “(C) funds subsequently appropriated for pay-  
24 ments of costs of cancellation or termination, subject  
25 to the limitations in paragraph (3).

1       “(2) The amount payable in the event of cancellation  
2 or termination of a share-in-savings contract shall be ne-  
3 gotiated with the contractor at the time the contract is  
4 entered into.

5       “(3) The head of an agency may enter into share-  
6 in-savings contracts under this section in any given fiscal  
7 year even if funds are not made specifically available for  
8 the full costs of cancellation or termination of the contract  
9 if funds are available and sufficient to make payments  
10 with respect to the first fiscal year of the contract and  
11 the following conditions are met regarding the funding of  
12 cancellation and termination liability:

13               “(A) The amount of unfunded contingent liabil-  
14 ity for the contract does not exceed the lesser of—

15                       “(i) 50 percent of the estimated costs of a  
16 cancellation or termination; or

17                       “(ii) \$10,000,000.

18               “(B) Unfunded contingent liability in excess of  
19 \$5,000,000 has been approved by the Director of the  
20 Office of Management and Budget or the Director’s  
21 designee.

22       “(c) DEFINITIONS.—In this section:

23               “(1) The term ‘contractor’ means a private en-  
24 tity that enters into a contract with an agency.

25               “(2) The term ‘savings’ means—

1 “(A) monetary savings to an agency; or

2 “(B) savings in time or other benefits real-  
3 ized by the agency, including enhanced reve-  
4 nues.

5 “(3) The term ‘share-in-savings contract’ means  
6 a contract under which—

7 “(A) a contractor provides solutions for—

8 “(i) improving the agency’s mission-  
9 related or administrative processes; or

10 “(ii) accelerating the achievement of  
11 agency missions; and

12 “(B) the head of the agency pays the con-  
13 tractor an amount equal to a portion of the sav-  
14 ings derived by the agency from—

15 “(i) any improvements in mission-re-  
16 lated or administrative processes that re-  
17 sult from implementation of the solution;

18 or

19 “(ii) acceleration of achievement of  
20 agency missions.”.

21 (b) OTHER CONTRACTS.—Section 317 of the Federal  
22 Property and Administrative Services Act of 1949 (41  
23 U.S.C. 266a) is amended to read as follows:

1 **“SEC. 317. SHARE-IN-SAVINGS CONTRACTS.**

2       “(a) AUTHORITY TO ENTER INTO SHARE-IN-SAV-  
3 INGS CONTRACTS.—(1) The head of an executive agency  
4 may enter into a share-in-savings contract in which the  
5 Government awards a contract to improve mission-related  
6 or administrative processes or to accelerate the achieve-  
7 ment of its mission and share with the contractor in sav-  
8 ings achieved through contract performance.

9       “(2)(A) Except as provided in subparagraph (B), a  
10 share-in-savings contract shall be awarded for a period of  
11 not more than five years.

12       “(B) A share-in-savings contract may be awarded for  
13 a period greater than five years, but not more than 10  
14 years, if the head of the agency determines in writing prior  
15 to award of the contract that—

16               “(i) the level of risk to be assumed and the in-  
17 vestment to be undertaken by the contractor is likely  
18 to inhibit the government from obtaining the needed  
19 performance competitively at a fair and reasonable  
20 price if the contract is limited in duration to a pe-  
21 riod of five years or less; and

22               “(ii) the performance to be acquired is likely to  
23 continue for a period of time sufficient to generate  
24 reasonable benefit for the government.

25       “(3) Contracts awarded pursuant to the authority of  
26 this section shall, to the maximum extent practicable, be

1 performance-based contracts that identify objective out-  
2 comes and contain performance standards that will be  
3 used to measure achievement and milestones that must  
4 be met before payment is made.

5       “(4) Contracts awarded pursuant to the authority of  
6 this section shall include a provision containing a quantifi-  
7 able baseline that is to be the basis upon which a savings  
8 share ratio is established that governs the amount of pay-  
9 ment a contractor is to receive under the contract. Before  
10 commencement of performance of such a contract, the  
11 chief acquisition officer of the agency, or, in the case of  
12 an agency without a chief acquisition officer, the senior  
13 procurement executive, shall determine in writing that the  
14 terms of the provision are quantifiable and will likely yield  
15 value to the Government.

16       “(5)(A) The head of the agency may retain savings  
17 realized through the use of a share-in-savings contract  
18 under this section that are in excess of the total amount  
19 of savings paid to the contractor under the contract. Ex-  
20 cept as provided in subparagraph (B), savings shall be  
21 credited to the appropriation or fund against which  
22 charges were made to carry out the contract.

23       “(B) Amounts retained by the agency under this sub-  
24 section shall—

1           “(i) without further appropriation, remain  
2           available until expended; and

3           “(ii) be applied first to fund any contingent li-  
4           abilities associated with share-in-savings procure-  
5           ments that are not fully funded.

6           “(b) CANCELLATION AND TERMINATION.—(1) If  
7           funds are not made available for the continuation of a  
8           share-in-savings contract entered into under this section  
9           in a subsequent fiscal year, the contract shall be canceled  
10          or terminated. The costs of cancellation or termination  
11          may be paid out of—

12           “(A) appropriations available for the perform-  
13           ance of the contract;

14           “(B) appropriations available for acquisition of  
15           the type of property or services procured under the  
16           contract, and not otherwise obligated; or

17           “(C) funds subsequently appropriated for pay-  
18           ments of costs of cancellation or termination, subject  
19           to the limitations in paragraph (3).

20          “(2) The amount payable in the event of cancellation  
21          or termination of a share-in-savings contract shall be ne-  
22          gotiated with the contractor at the time the contract is  
23          entered into.

24          “(3) The head of an executive agency may enter into  
25          share-in-savings contracts under this section in any given

1 fiscal year even if funds are not made specifically available  
2 for the full costs of cancellation or termination of the con-  
3 tract if funds are available and sufficient to make pay-  
4 ments with respect to the first fiscal year of the contract  
5 and the following conditions are met regarding the funding  
6 of cancellation and termination liability:

7           “(A) The amount of unfunded contingent liabil-  
8           ity for the contract does not exceed the lesser of—

9                   “(i) 50 percent of the estimated costs of a  
10                   cancellation or termination; or

11                   “(ii) \$10,000,000.

12           “(B) Unfunded contingent liability in excess of  
13           \$5,000,000 has been approved by the Director of the  
14           Office of Management and Budget or the Director’s  
15           designee.

16           “(c) DEFINITIONS.—In this section:

17                   “(1) The term ‘contractor’ means a private en-  
18                   tity that enters into a contract with an agency.

19                   “(2) The term ‘savings’ means—

20                           “(A) monetary savings to an agency; or

21                           “(B) savings in time or other benefits real-  
22                   ized by the agency, including enhanced reve-  
23                   nues.

24                   “(3) The term ‘share-in-savings contract’ means  
25                   a contract under which—

1 “(A) a contractor provides solutions for—

2 “(i) improving the agency’s mission-  
3 related or administrative processes; or

4 “(ii) accelerating the achievement of  
5 agency missions; and

6 “(B) the head of the agency pays the con-  
7 tractor an amount equal to a portion of the sav-  
8 ings derived by the agency from—

9 “(i) any improvements in mission-re-  
10 lated or administrative processes that re-  
11 sult from implementation of the solution;

12 or

13 “(ii) acceleration of achievement of  
14 agency missions.”.

15 (c) DEVELOPMENT OF INCENTIVES.—The Director  
16 of the Office of Management and Budget shall—

17 (1) identify potential opportunities for the use  
18 of share-in-savings contracts;

19 (2) provide guidance to executive agencies for  
20 determining mutually beneficial savings share ratios  
21 and baselines from which savings may be measured;  
22 and

23 (3) in consultation with the Committee on Gov-  
24 ernmental Affairs of the Senate, the Committee on  
25 Government Reform of the House of Representa-

1 tives, and executive agencies, develop techniques to  
2 permit an executive agency to retain a portion of the  
3 savings (after payment of the contractor's share of  
4 the savings) derived from share-in-savings contracts  
5 as funds are appropriated to the agency in future  
6 fiscal years.

7 (d) REGULATIONS.—Not later than 180 days after  
8 the date of the enactment of this Act, the Federal Acquisi-  
9 tion Regulation shall be revised to implement the provi-  
10 sions enacted by this section. Such revisions shall—

11 (1) provide for the use of competitive proce-  
12 dures in the selection and award of share-in-savings  
13 contracts to—

14 (A) ensure the contractor's share of sav-  
15 ings reflects the risk involved and market condi-  
16 tions; and

17 (B) otherwise yield best value to the gov-  
18 ernment; and

19 (2) allow appropriate regulatory flexibility to fa-  
20 cilitate the use of share-in-savings contracts by exec-  
21 utive agencies, including the use of innovative provi-  
22 sions for technology refreshment and nonstandard  
23 Federal Acquisition Regulation contract clauses.

24 (e) OMB REPORT TO CONGRESS.—In consultation  
25 with executive agencies, the Director of the Office of Man-

1 agement and Budget shall, not later than 2 years after  
2 the completion of the revisions to the Federal Acquisition  
3 Regulation under subsection (d), submit to Congress a re-  
4 port containing—

5 (1) a description of the number of share-in-sav-  
6 ings contracts entered into by each executive agency  
7 under by this section and the amendments made by  
8 this section, and, for each contract identified—

9 (A) the performance acquired;

10 (B) the total amount of payments made to  
11 the contractor; and

12 (C) the total amount of savings or other  
13 measurable benefits realized;

14 (2) a description of the ability of agencies to de-  
15 termine the baseline costs of a project against which  
16 savings can be measured; and

17 (3) any recommendations, as the Director  
18 deems appropriate, regarding additional changes in  
19 law that may be necessary to ensure effective use of  
20 share-in-savings contracts by executive agencies.

21 (f) DEFINITIONS.—In this section, the terms “con-  
22 tractor”, “savings”, and “share-in-savings contract” have  
23 the meanings given those terms in section 2332 of title  
24 10, United States Code, and section 317 of the Federal

1 Property and Administrative Services Act of 1949 (as  
2 amended by subsections (a) and (b)).

3 (g) REPEAL OF SUPERSEDED PROVISIONS.—Sub-  
4 sections (c), (d), (e), (f), (g), and (i) of section 210 of  
5 the E-Government Act of 2002 (Public Law 107–347; 116  
6 Stat. 2936) are repealed.

7 **SEC. 103. INFLATION ADJUSTMENT FOR ACQUISITION-RE-**  
8 **LATED DOLLAR THRESHOLDS.**

9 (a) REQUIREMENT FOR ADJUSTMENT.—The Office  
10 of Federal Procurement Policy Act (41 U.S.C. 403 et seq.)  
11 is amended by adding at the end the following new section:

12 **“SEC. 42. INFLATION ADJUSTMENT FOR ACQUISITION-RE-**  
13 **LATED DOLLAR THRESHOLDS.**

14 “(a) REQUIREMENT FOR ADJUSTMENT.—In each  
15 year that is divisible by 5, the Federal Acquisition Regu-  
16 latory Council (established under section 25) shall adjust  
17 each dollar threshold set out in an acquisition statute to  
18 the amount that is equal to the October 1, 2000 constant  
19 dollar value for that threshold, as determined on the basis  
20 of the Consumer Price Index for October of the year in  
21 which adjusted.

22 “(b) ROUNDING OF ADJUSTED AMOUNTS.—In the  
23 application of a percentage adjustment to the amount of  
24 a dollar threshold under subsection (a), the calculated  
25 amount shall be rounded as follows:

1           “(1) In the case of a dollar threshold that is  
2           less than \$10,000 before the adjustment, to the  
3           nearest \$500.

4           “(2) In the case of a dollar threshold that is  
5           less than \$100,000 but not less than \$10,000 before  
6           the adjustment, to the nearest \$5,000.

7           “(3) In the case of a dollar threshold that is  
8           less than \$1,000,000 but not less than \$100,000 be-  
9           fore the adjustment, to the nearest \$50,000.

10           “(4) In the case of a dollar threshold that is  
11           \$1,000,000 or more before the adjustment, to the  
12           nearest \$500,000.

13           “(c) PUBLICATION.—The Federal Acquisition Regu-  
14           latory Council shall publish each adjusted dollar threshold  
15           under this section in the Federal Register.

16           “(d) EFFECTIVE DATE OF ADJUSTMENT.—An ad-  
17           justed dollar threshold under this section shall have the  
18           force and effect of law beginning on the date of the publi-  
19           cation of the threshold in the Federal Register under sub-  
20           section (c).

21           “(e) DEFINITIONS.—In this section:

22           “(1) The term ‘acquisition statute’ means any  
23           provision of a statute, including a definition, that  
24           governs the applicability of any policy, procedure, re-

1        requirement, restriction, or condition to the acquisition  
2        of goods or services by executive agencies.

3            “(2) The term ‘Consumer Price Index’ means  
4        the Consumer Price Index for all-urban consumers  
5        published monthly by the Department of Labor.”.

6        (b) CLERICAL AMENDMENT.—The table of sections  
7        in section 1(b) of such Act is amended by adding at the  
8        end the following new item:

          “Sec. 42. Inflation adjustment for acquisition-related dollar thresholds.”.

9        **SEC. 104. AGENCY ACQUISITION PROTESTS.**

10        (a) DEFENSE CONTRACTS.—(1) Chapter 137 of title  
11        10, United States Code, is amended by inserting after sec-  
12        tion 2305a the following new section:

13        **“§ 2305b. Protests**

14            “(a) IN GENERAL.—An interested party may protest  
15        an acquisition of supplies or services by an agency based  
16        on an alleged violation of an acquisition law or regulation,  
17        and a decision regarding such alleged violation shall be  
18        made by the agency in accordance with this section.

19            “(b) RESTRICTION ON CONTRACT AWARD PEND-  
20        ING.—(1) Except as provided in paragraph (2), a contract  
21        may not be awarded by an agency after a protest con-  
22        cerning the acquisition has been submitted under this sec-  
23        tion and while the protest is pending.

24            “(2) The head of the acquisition activity responsible  
25        for the award of the contract may authorize the award

1 of a contract, notwithstanding a pending protest under  
2 this section, upon making a written finding that urgent  
3 and compelling circumstances do not allow for waiting for  
4 a decision on the protest.

5 “(c) RESTRICTION ON CONTRACT PERFORMANCE  
6 PENDING DECISION.—(1) Except as provided in para-  
7 graph (2), performance of a contract may not be author-  
8 ized (and performance of the contract shall cease if per-  
9 formance has already begun) in any case in which a pro-  
10 test of the contract award is submitted under this section  
11 before the later of—

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

14 “(B) the date that is five days after an agency  
15 debriefing date offered to an unsuccessful offeror for  
16 any debriefing that is requested and, when re-  
17 quested, is required, under section 2305(b)(5) of  
18 this title.

19 “(2) The head of the acquisition activity responsible  
20 for the award of a contract may authorize performance  
21 of the contract notwithstanding a pending protest under  
22 this section upon making a written finding that urgent  
23 and compelling circumstances do not allow for waiting for  
24 a decision on the protest.

1       “(d) DEADLINE FOR DECISION.—The head of an  
2 agency shall issue a decision on a protest under this sec-  
3 tion not later than the date that is 20 working days after  
4 the date on which the protest is submitted to such head  
5 of an agency.

6       “(e) JUDICIAL REVIEW.—A decision on a protest  
7 under this section is not subject to judicial review.

8       “(f) CONSTRUCTION.—Nothing in this section shall  
9 affect the right of an interested party to file a protest with  
10 the Comptroller General under subchapter V of chapter  
11 35 of title 31. An interested party who has filed a protest  
12 under this section with respect to an acquisition may not  
13 file an action with respect to that acquisition in the United  
14 States Court of Federal Claims while the protest is pend-  
15 ing.

16       “(g) DEFINITIONS.—In this section, the terms ‘pro-  
17 test’ and ‘interested party’ have the meanings given such  
18 terms in section 3551 of title 31.”.

19       (2) The table of sections at the beginning of such  
20 chapter is amended by inserting after the item relating  
21 to section 2305a the following new item:

“2305b. Protests.”.

22       (b) OTHER AGENCIES.—Title III of the Federal  
23 Property and Administrative Services Act of 1949 is  
24 amended by inserting after section 303M (41 U.S.C.  
25 253m) the following new section:

1 **“SEC. 303N. PROTESTS.**

2       “(a) IN GENERAL.—An interested party may protest  
3 an acquisition of supplies or services by an executive agen-  
4 cy based on an alleged violation of an acquisition law or  
5 regulation, and a decision regarding such alleged violation  
6 shall be made by the agency in accordance with this sec-  
7 tion.

8       “(b) RESTRICTION ON CONTRACT AWARD PENDING  
9 DECISION.—(1) Except as provided in paragraph (2), a  
10 contract may not be awarded by an agency after a protest  
11 concerning the acquisition has been submitted under this  
12 section and while the protest is pending.

13       “(2) The head of the acquisition activity responsible  
14 for the award of a contract may authorize the award of  
15 the contract, notwithstanding a pending protest under this  
16 section, upon making a written finding that urgent and  
17 compelling circumstances do not allow for waiting for a  
18 decision on the protest.

19       “(c) RESTRICTION ON CONTRACT PERFORMANCE  
20 PENDING DECISION.—(1) Except as provided in para-  
21 graph (2), performance of a contract may not be author-  
22 ized (and performance of the contract shall cease if per-  
23 formance has already begun) in any case in which a pro-  
24 test of the contract award is submitted under this section  
25 before the later of—

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

3           “(B) the date that is five days after an agency  
4 debriefing date offered to an unsuccessful offeror for  
5 any debriefing that is requested and, when re-  
6 quested, is required, under section 303B(e) of this  
7 title.

8           “(2) The head of the acquisition activity responsible  
9 for the award of a contract may authorize performance  
10 of the contract notwithstanding a pending protest under  
11 this section upon making a written finding that urgent  
12 and compelling circumstances do not allow for waiting for  
13 a decision on the protest.

14           “(d) DEADLINE FOR DECISION.—The head of an ex-  
15 ecutive agency shall issue a decision on a protest under  
16 this section not later than the date that is 20 working  
17 days after the date on which the protest is submitted to  
18 the executive agency.

19           “(e) JUDICIAL REVIEW.—A decision on a protest  
20 under this section shall not be subject to judicial review.

21           “(f) CONSTRUCTION.—Nothing in this section shall  
22 affect the right of an interested party to file a protest with  
23 the Comptroller General under subchapter V of chapter  
24 35 of title 31, United States Code. An interested party  
25 who has filed a protest under this section with respect to

1 an acquisition may not file an action with respect to that  
2 acquisition in the United States Court of Federal Claims  
3 while the protest is pending.

4 “(g) DEFINITIONS.—In this section, the terms ‘pro-  
5 test’ and ‘interested party’ have the meanings given such  
6 terms in section 3551 of title 31, United States Code.”.

7 (c) CONFORMING AMENDMENT.—Section 3553(d)(4)  
8 of title 31, United States Code, is amended—

9 (1) in subparagraph (A), by striking “or” at  
10 the end;

11 (2) by striking the period at the end of sub-  
12 paragraph (B) and inserting “; or”; and

13 (3) by adding at the end the following new sub-  
14 paragraph:

15 “(C) in the case of a protest of the same matter  
16 regarding such contract that is submitted under sec-  
17 tion 2305b of title 10 or section 303N of the Fed-  
18 eral Property and Administrative Services Act of  
19 1949, the date that is 5 days after the date on  
20 which a decision on that protest is issued.”.

21 **SEC. 105. EXTENSION OF AUTHORITY FOR USE OF SIM-**  
22 **PLIFIED ACQUISITION PROCEDURES.**

23 Section 4202(e) of the Clinger-Cohen Act (division D  
24 of Public Law 104–106; 110 Stat. 652; 10 U.S.C. 2304

1 note) is amended by striking “January 1, 2006” and in-  
2 serting “January 1, 2009”.

3 **SEC. 106. REDUNDANCY IN PROCUREMENT OF TELE-**  
4 **COMMUNICATIONS SERVICES.**

5 (a) REGULATIONS REQUIRED.—Not later than 180  
6 days after the date of the enactment of this Act, the Fed-  
7 eral Acquisition Regulation shall be revised to require an  
8 executive agency, in the procurement of telecommuni-  
9 cations services (including information services) to pro-  
10 vide, to the maximum extent practicable, that such serv-  
11 ices include (1) redundant and physically separate points  
12 of entry; and (2) physically diverse local network facilities.

13 (b) DEFINITIONS.—In this section:

14 (1) The terms “telecommunications service”  
15 and “information service” have the meanings pro-  
16 vided in section 3 of the Communications Act of  
17 1934 (47 U.S.C. 153).

18 (2) The term “executive agency” has the mean-  
19 ing provided in section 4 of the Office of Federal  
20 Procurement Policy Act (41 U.S.C. 403).

21 (3) The term “Federal Acquisition Regulation”  
22 means the single Government-wide procurement reg-  
23 ulation issued in accordance with sections 6 and 25  
24 of the Office of Federal Procurement Policy Act (41  
25 U.S.C. 405, 421).

1     **TITLE II—CONTRACT DISPUTE**  
2                     **ENHANCEMENT**  
3     **Subtitle A—General Provisions**

4     **SEC. 211. DEFINITIONS.**

5             (a) IN GENERAL.—The Office of Federal Procure-  
6     ment Policy Act (41 U.S.C. 401 et seq.) is amended by  
7     adding at the end the following:

8                     **“TITLE II—DISPUTE**  
9                             **RESOLUTION**  
10            **“Subtitle A—General Provisions**

11    **“SEC. 201. DEFINITIONS.**

12             “In this title:

13                     “(1) The term ‘Defense Board’ means the De-  
14     partment of Defense Board of Contract Appeals es-  
15     tablished pursuant to section 8(a)(1) of the Contract  
16     Disputes Act of 1978 (41 U.S.C. 607).

17                     “(2) The term ‘Civilian Board’ means the Civil-  
18     ian Board of Contract Appeals established pursuant  
19     to section 8(b)(1) of the Contract Disputes Act of  
20     1978 (41 U.S.C. 607).

21                     “(3) The term ‘Board judge’ means a member  
22     of the Defense Board or the Civilian Board, as the  
23     case may be.

1           “(4) The term ‘Chairman’ means the Chairman  
2 of the Defense Board or the Civilian Board, as the  
3 case may be.

4           “(5) The term ‘Board concerned’ means—

5                 “(A) the Defense Board with respect to  
6 matters within its jurisdiction; and

7                 “(B) the Civilian Board with respect to  
8 matters within its jurisdiction.

9           “(6) The term ‘executive agency’—

10                 “(A) with respect to contract disputes  
11 under the jurisdiction of the Defense Board,  
12 means the Department of Defense, the Depart-  
13 ment of the Army, the Department of the Navy,  
14 the Department of the Air Force, or the Na-  
15 tional Aeronautics and Space Administration;  
16 and

17                 “(B) with respect to contract disputes  
18 under the jurisdiction of the Civilian Board, has  
19 the meaning given by section 4(1) of this Act  
20 except that the term does not include the De-  
21 partment of Defense, the Department of the  
22 Army, the Department of the Navy, the Depart-  
23 ment of the Air Force, the National Aero-  
24 nautics and Space Administration, and the Ten-  
25 nessee Valley Authority.”.

1 (b) CONFORMING AMENDMENTS.—The Office of  
2 Federal Procurement Policy Act (41 U.S.C. 401 et seq.)  
3 is further amended—

4 (1) by inserting the following before section 1:  
5 **“TITLE I—FEDERAL PROCUREMENT POLICY GENERALLY”;**  
6

7 and

8 (2) in section 4, by striking out “As used in  
9 this Act:” and inserting in lieu thereof “Except as  
10 otherwise specifically provided, as used in this Act.”.

11 **Subtitle B—Establishment of Civil-**  
12 **ian and Defense Boards of Con-**  
13 **tract Appeals**

14 **SEC. 221. ESTABLISHMENT.**

15 (a) DEFENSE BOARD.—Subsection (a)(1) of section  
16 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607)  
17 is amended to read as follows:

18 “(a)(1) There is established in the Department of De-  
19 fense a board of contract appeals to be known as the De-  
20 partment of Defense Board of Contract Appeals.”.

21 (b) CIVILIAN BOARD.—Subsection (b)(1) of section  
22 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607)  
23 is amended to read as follows:

1 “(b)(1) There is established in the General Services  
2 Administration a board of contract appeals to be known  
3 as the Civilian Board of Contract Appeals.”.

4 **SEC. 222. MEMBERSHIP.**

5 The Office of Federal Procurement Policy Act (41  
6 U.S.C. 401 et seq.), as amended by section 211, is further  
7 amended by adding at the end the following:

8 **“SEC. 202. MEMBERSHIP.**

9 “(a) APPOINTMENT.—(1)(A) The Defense Board  
10 shall consist of judges appointed by the Secretary of De-  
11 fense from a register of applicants maintained by the De-  
12 fense Board, in accordance with rules issued by the De-  
13 fense Board for establishing and maintaining a register  
14 of eligible applicants and selecting Defense Board judges.  
15 The Secretary shall appoint a judge without regard to po-  
16 litical affiliation and solely on the basis of the professional  
17 qualifications required to perform the duties and respon-  
18 sibilities of a Defense Board judge.

19 “(B) The Civilian Board shall consist of judges ap-  
20 pointed by the Administrator for Federal Procurement  
21 Policy from a register of applicants maintained by the Ad-  
22 ministrator, in accordance with rules issued by the Admin-  
23 istrator for establishing and maintaining a register of eli-  
24 gible applicants and selecting Civilian Board judges. The  
25 Administrator shall appoint a judge without regard to po-

1 litical affiliation and solely on the basis of the professional  
2 qualifications required to perform the duties and respon-  
3 sibilities of a Civilian Board judge.

4       “(2) The members of the Defense Board and the Ci-  
5 vilian Board shall be selected and appointed to serve in  
6 the same manner as administrative law judges appointed  
7 pursuant to section 3105 of title 5, United States Code,  
8 with an additional requirement that such members shall  
9 have had not fewer than five years of experience in public  
10 contract law.

11       “(3) Notwithstanding paragraph (2) and subject to  
12 subsection (b), the following persons shall serve as Board  
13 judges:

14               “(A) For the Defense Board, any full-time  
15 member of the Armed Services Board of Contract  
16 Appeals serving as such on the day before the effec-  
17 tive date of this title.

18               “(B) For the Civilian Board, any full-time  
19 member of any agency board of contract appeals  
20 other than the Armed Services Board of Contract  
21 Appeals, the Postal Service Board of Contract Ap-  
22 peals, and the board of contract appeals of the Ten-  
23 nessee Valley Authority serving as such on the day  
24 before the effective date of this title.

1       “(b) REMOVAL.—Members of the Defense Board and  
2 the Civilian Board shall be subject to removal in the same  
3 manner as administrative law judges, as provided in sec-  
4 tion 7521 of title 5, United States Code.

5       “(c) COMPENSATION.—Compensation for the Chair-  
6 man of the Defense Board and the Chairman of the Civil-  
7 ian Board and all other members of each Board shall be  
8 determined under section 5372a of title 5, United States  
9 Code.”.

10 **SEC. 223. CHAIRMEN.**

11       The Office of Federal Procurement Policy Act (41  
12 U.S.C. 401 et seq.), as amended by section 222, is further  
13 amended by adding at the end the following:

14 **“SEC. 203. CHAIRMEN.**

15       “(a) DESIGNATION.—(1)(A) The Chairman of the  
16 Defense Board shall be designated by the Secretary of De-  
17 fense to serve for a term of five years. The Secretary shall  
18 select the Chairman from among sitting judges each of  
19 whom has had at least five years of service as a member  
20 of the Armed Services Board of Contract Appeals.

21       “(B) The Chairman of the Civilian Board shall be  
22 designated by the Administrator for Federal Procurement  
23 Policy to serve for a term of five years. The Administrator  
24 shall select the Chairman from among sitting judges each  
25 of whom has had at least five years of service as a member

1 of an agency board of contract appeals other than the  
2 Armed Services Board of Contract Appeals.

3 “(2) A Chairman of a Board may continue to serve  
4 after the expiration of the Chairman’s term until a suc-  
5 cessor has taken office. A Chairman may be reappointed  
6 any number of times.

7 “(b) RESPONSIBILITIES.—The Chairman of the De-  
8 fense Board or the Civilian Board, as the case may be,  
9 shall be responsible on behalf of the Board for the execu-  
10 tive and administrative operation of the Board, including  
11 functions of the Board with respect to the following:

12 “(1) The selection, appointment, and fixing of  
13 the compensation of such personnel, pursuant to  
14 part III of title 5, United States Code, as the Chair-  
15 man considers necessary or appropriate, including a  
16 Clerk of the Board, a General Counsel, and clerical  
17 and legal assistance for Board judges.

18 “(2) The supervision of personnel employed by  
19 or assigned to the Board, and the distribution of  
20 work among such personnel.

21 “(3) The operation of an Office of the Clerk of  
22 the Board, including the receipt of all filings made  
23 with the Board, the assignment of cases, and the  
24 maintenance of all records of the Board.

1           “(4) The prescription of such rules and regula-  
2           tions as the Chairman considers necessary or appro-  
3           priate for the administration and management of the  
4           Board.

5           “(c) VICE CHAIRMEN.—The Chairman of the De-  
6           fense Board or the Civilian Board, as the case may be,  
7           may designate up to two other Board judges as Vice  
8           Chairmen. The Vice Chairmen, in the order designated by  
9           the Chairman, shall act in the place and stead of the  
10          Chairman during the absence of the Chairman.”.

11          **SEC. 224. RULEMAKING AUTHORITY.**

12          The Office of Federal Procurement Policy Act (41  
13          U.S.C. 401 et seq.), as amended by section 223, is further  
14          amended by adding at the end the following:

15          **“SEC. 204. RULEMAKING AUTHORITY.**

16          “Except as provided by section 252 of the Acquisition  
17          System Improvement Act, the Chairman of the Defense  
18          Board and the Chairman of the Civilian Board, in con-  
19          sultation with the Administrator for Federal Procurement  
20          Policy, shall jointly issue and maintain—

21                 “(1) such procedural rules and regulations as  
22                 are necessary to the exercise of the functions of the  
23                 Boards under section 211; and

24                 “(2) statements of policy of general applica-  
25                 bility with respect to such functions.”.

1 **SEC. 225. AUTHORIZATION OF APPROPRIATIONS.**

2 The Office of Federal Procurement Policy Act (41  
3 U.S.C. 401 et seq.), as amended by section 224, is further  
4 amended by adding at the end the following:

5 **“SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

6 “There are authorized to be appropriated for fiscal  
7 year 2005 and each succeeding fiscal year such sums as  
8 may be necessary to carry out the provisions of this title.  
9 Funds for the activities of each Board shall be separately  
10 appropriated for such purpose. Funds appropriate pursu-  
11 ant to this section shall remain available until expended.”.

12 **Subtitle C—Functions of Defense**  
13 **and Civilian Boards of Contract**  
14 **Appeals**

15 **SEC. 231. CONTRACT DISPUTES.**

16 The Office of Federal Procurement Policy Act (41  
17 U.S.C. 401 et seq.), as amended by section 225, is further  
18 amended by adding at the end the following:

19 **“Subtitle B—Functions of the De-**  
20 **fense and Civilian Boards of**  
21 **Contract Appeals**

22 **“SEC. 211. CONTRACT DISPUTES.**

23 “The Defense Board shall have jurisdiction as pro-  
24 vided by section 8(a)(1) of the Contract Disputes Act of  
25 1978 (41 U.S.C. 607(a)). The Civilian Board shall have

1 jurisdiction as provided by section 8(b)(1) of such Act (41  
2 U.S.C. 607(b)).”.

3 **SEC. 232. ENHANCED ACCESS FOR SMALL BUSINESS.**

4 Section 9(a) of the Contract Disputes Act of 1978  
5 (41 U.S.C. 608) is amended by striking out the period  
6 at the end of the first sentence and inserting the following:  
7 “or, in the case of a small business concern (as defined  
8 in the Small Business Act and regulations under that  
9 Act), \$150,000 or less.”.

10 **SEC. 233. APPLICABILITY TO CERTAIN CONTRACTS.**

11 The Office of Federal Procurement Policy Act (41  
12 U.S.C. 401 et seq.), as amended by section 231, is further  
13 amended by adding at the end the following:

14 **“SEC. 212. APPLICABILITY TO CERTAIN CONTRACTS.**

15 “(a) CONTRACTS AT OR BELOW THE SIMPLIFIED AC-  
16 QUISSION THRESHOLD.—Notwithstanding section 33 of  
17 this Act, the authority conferred on the Defense Board  
18 and the Civilian Board by this title is applicable to con-  
19 tracts in amounts not greater than the simplified acquisi-  
20 tion threshold.

21 “(b) CONTRACTS FOR COMMERCIAL ITEMS.—Not-  
22 withstanding section 34 of this Act, the authority con-  
23 ferred on the Defense Board and the Civilian Board by  
24 this title is applicable to contracts for the procurement of  
25 commercial items.”.

1 **Subtitle D—Transfers and Transi-**  
2 **tion, Savings, and Conforming**  
3 **Provisions**

4 **SEC. 241. TRANSFER AND ALLOCATION OF APPROPRIA-**  
5 **TIONS AND PERSONNEL.**

6 (a) TRANSFERS.—

7 (1) ARMED SERVICES BOARD OF CONTRACT AP-  
8 PEALS.—The personnel employed in connection with,  
9 and the assets, liabilities, contracts, property,  
10 records, and unexpended balance of appropriations,  
11 authorizations, allocations, and other funds em-  
12 ployed, held, used, arising from, available to, or to  
13 be made available in connection with the functions  
14 vested by law in the Armed Services Board of Con-  
15 tract Appeals established pursuant to section 8 of  
16 the Contract Disputes Act of 1978 (41 U.S.C. 607)  
17 (as in effect on the day before the effective date de-  
18 scribed in section 251), shall be transferred to the  
19 Department of Defense Board of Contract Appeals  
20 for appropriate allocation by the Chairman of that  
21 Board.

22 (2) OTHER BOARDS OF CONTRACTS APPEALS.—  
23 The personnel employed in connection with, and the  
24 assets, liabilities, contracts, property, records, and  
25 unexpended balance of appropriations, authoriza-

1 tions, allocations, and other funds employed, held,  
2 used, arising from, available to, or to be made avail-  
3 able in connection with the functions vested by law  
4 in the boards of contract appeals established pursu-  
5 ant to section 8 of the Contract Disputes Act of  
6 1978 (41 U.S.C. 607) (as in effect on the day before  
7 the effective date described in section 251) other  
8 than the Armed Services Board of Contract Appeals,  
9 the board of contract appeals of the Tennessee Val-  
10 ley Authority, and the Postal Service Board of Con-  
11 tract Appeals shall be transferred to the Civilian  
12 Board of Contract Appeals for appropriate allocation  
13 by the Chairman of that Board.

14 (b) EFFECT ON PERSONNEL.—Personnel transferred  
15 pursuant to this subtitle shall not be separated or reduced  
16 in compensation for one year after such transfer, except  
17 for cause.

18 (c) REGULATIONS.—(1) The Department of Defense  
19 Board of Contract Appeals and the Civilian Board of Con-  
20 tract Appeals shall each prescribe regulations for the re-  
21 lease of competing employees in a reduction in force that  
22 gives due effect to—

- 23 (A) efficiency or performance ratings;
- 24 (B) military preference; and
- 25 (C) tenure of employment.

1           (2) In prescribing the regulations, the Board con-  
2 cerned shall provide for military preference in the same  
3 manner as set forth in subchapter I of chapter 35 of title  
4 5, United States Code.

5 **SEC. 242. TERMINATIONS AND SAVINGS PROVISIONS.**

6           (a) TERMINATION OF BOARDS OF CONTRACT AP-  
7 PEALS.—Effective on the effective date described in sec-  
8 tion 251, the boards of contract appeals established pursu-  
9 ant to section 8 of the Contract Disputes Act of 1978 (41  
10 U.S.C. 607) (as in effect on the day before such effective  
11 date), other than the board of contract appeals of the Ten-  
12 nessee Valley Authority and the Postal Service Board of  
13 Contract Appeals, shall terminate.

14           (b) SAVINGS PROVISION FOR CONTRACT DISPUTE  
15 MATTERS PENDING BEFORE BOARDS.—(1) This title and  
16 the amendments made by this title shall not affect any  
17 proceedings pending on the effective date described in sec-  
18 tion 251 before any board of contract appeals terminated  
19 by subsection (a).

20           (2) In the case of any such proceedings pending be-  
21 fore the Armed Services Board of Contract Appeals, the  
22 proceedings shall be continued by the Department of De-  
23 fense Board of Contract Appeals, and orders which were  
24 issued in any such proceeding by the Armed Services  
25 Board of Contract Appeals shall continue in effect until

1 modified, terminated, superseded, or revoked by the De-  
2 partment of Defense Board of Contract Appeals, by a  
3 court of competent jurisdiction, or by operation of law.

4 (3) In the case of any such proceedings pending be-  
5 fore an agency board of contract appeals other than the  
6 Armed Services Board of Contract Appeals or the board  
7 of contract appeals of the Tennessee Valley Authority, the  
8 proceedings shall be continued by the Civilian Board of  
9 Contract Appeals, and orders which were issued in any  
10 such proceeding by the agency board shall continue in ef-  
11 fect until modified, terminated, superseded, or revoked by  
12 the Civilian Board of Contract Appeals, by a court of com-  
13 petent jurisdiction, or by operation of law.

14 **SEC. 243. CONTRACT DISPUTES AUTHORITY OF BOARDS.**

15 (a) Section 2 of the Contract Disputes Act of 1978  
16 (41 U.S.C. 601) is amended—

17 (1) in paragraph (2), by striking out “, the  
18 United States Postal Service, and the Postal Rate  
19 Commission”;

20 (2) by redesignating paragraph (7) as para-  
21 graph (9);

22 (3) by amending paragraph (6) to read as fol-  
23 lows:

24 “(6) the terms ‘agency board’ or ‘agency board  
25 of contract appeals’ mean—

1           “(1) the Department of Defense Board of  
2           Contract Appeals established under section  
3           8(a)(1) of this Act;

4           “(2) the Civilian Board of Contract Ap-  
5           peals established under section 8(b)(1) of this  
6           Act;

7           “(3) the board of contract appeals of the  
8           Tennessee Valley Authority; or

9           “(4) the Postal Service Board of Contract  
10          Appeals established under section 8(h) of this  
11          Act;” and

12          (4) by inserting after paragraph (6) the fol-  
13          lowing new paragraphs:

14          “(7) the term ‘Defense Board’ means the De-  
15          partment of Defense Board of Contract Appeals es-  
16          tablished under section 8(a)(1) of this Act;

17          “(8) the term ‘Civilian Board’ means the Civil-  
18          ian Board of Contract Appeals established under  
19          section 8(b)(1) of this Act; and”.

20          (b) Section 8 of the Contract Disputes Act of 1978  
21          (41 U.S.C. 607), as amended by section 221, is further  
22          amended—

23                  (1) by striking out subsection (c);

24                  (2) in subsection (d)—

1 (A) by striking out the first sentence and  
2 inserting in lieu thereof the following: “The De-  
3 fense Board shall have jurisdiction to decide  
4 any appeal from a decision of a contracting offi-  
5 cer of the Department of Defense, the Depart-  
6 ment of the Army, the Department of the Navy,  
7 the Department of the Air Force, or the Na-  
8 tional Aeronautics and Space Administration  
9 relative to a contract made by that department  
10 or agency. The Civilian Board shall have juris-  
11 diction to decide any appeal from a decision of  
12 a contracting officer of any executive agency  
13 (other than the Department of Defense, the De-  
14 partment of the Army, the Department of the  
15 Navy, the Department of the Air Force, the  
16 National Aeronautics and Space Administra-  
17 tion, the United States Postal Service, the Post-  
18 al Rate Commission, or the Tennessee Valley  
19 Authority) relative to a contract made by that  
20 agency. Each other agency board shall have ju-  
21 risdiction to decide any appeal from a decision  
22 of a contracting officer relative to a contract  
23 made by its agency.”; and

1 (B) in the second sentence, by striking out  
2 “Claims Court” and inserting in lieu thereof  
3 “Court of Federal Claims”;

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

6 “(h) There is established an agency board of contract  
7 appeals to be known as the ‘Postal Service Board of Con-  
8 tract Appeals’. Such board shall have jurisdiction to decide  
9 any appeal from a decision of a contracting officer of the  
10 United States Postal Service or the Postal Rate Commis-  
11 sion relative to a contract made by either agency. Such  
12 board shall consist of judges appointed by the Postmaster  
13 General who shall meet the qualifications of and serve in  
14 the same manner as judges of the Civilian Board of Con-  
15 tract Appeals. This Act and title II of the Office of Fed-  
16 eral Procurement Policy Act shall apply to contract dis-  
17 putes before the Postal Service Board of Contract Appeals  
18 in the same manner as they apply to contract disputes  
19 before the Civilian Board.”; and

20 (4) by striking out subsection (i).

21 **SEC. 244. REFERENCES TO AGENCY BOARDS OF CONTRACT**

22 **APPEALS.**

23 (a) DEFENSE BOARD.—Any reference to the Armed  
24 Services Board of Contract Appeals in any provision of  
25 law or in any rule, regulation, or other paper of the United

1 States shall be treated as referring to the Department of  
2 Defense Board of Contract Appeals.

3 (b) CIVILIAN BOARD.—Any reference to an agency  
4 board of contract appeals other than the Armed Services  
5 Board of Contract Appeals, the board of contract appeals  
6 of the Tennessee Valley Authority, or the Postal Service  
7 Board of Contract Appeals in any provision of law or in  
8 any rule, regulation, or other paper of the United States  
9 shall be treated as referring to the Civilian Board of Con-  
10 tract Appeals.

11 **SEC. 245. CONFORMING AMENDMENTS.**

12 (a) TITLE 5.—Section 5372a(a)(1) of title 5, United  
13 States Code, is amended by inserting after “of 1978” the  
14 following: “or a member of the Department of Defense  
15 Board of Contract Appeals or the Civilian Board of Con-  
16 tract Appeals appointed under section 202 of the Office  
17 of Federal Procurement Policy Act”.

18 (b) OFFICE OF FEDERAL PROCUREMENT POLICY  
19 ACT.—The table of contents for the Office of Federal Pro-  
20 curement Policy Act (contained in section 1(b)) is amend-  
21 ed—

22 (1) by inserting the following before the item  
23 relating to section 1:

“TITLE I—FEDERAL PROCUREMENT POLICY GENERALLY”;

24 and

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

## “TITLE II—DISPUTE RESOLUTION

## “Subtitle A—General Provisions

- “201. Definitions.
- “202. Membership.
- “203. Chairmen.
- “204. Rulemaking authority.
- “205. Authorization of appropriations.

## “Subtitle B—Functions of the Defense and Civilian Boards of Contract Appeals

- “211. Contract disputes.
- “212. Applicability to certain contracts.”.

1 **Subtitle E—Effective Date; Regula-**  
 2 **tions and Appointment of Chair-**  
 3 **men**

4 **SEC. 251. EFFECTIVE DATE.**

5 Title II of the Office of Federal Procurement Policy  
 6 Act, as added by this title, and the amendments and re-  
 7 peals made by this title shall take effect 1 year after the  
 8 date of the enactment of this Act.

9 **SEC. 252. REGULATIONS.**

10 (a) REGULATIONS REGARDING CLAIMS.—Not later  
 11 than 1 year after the date of the enactment of this Act,  
 12 the Chairman of the Armed Services Board of Contract  
 13 Appeals and the Chairman of the General Services Board  
 14 of Contract Appeals, in consultation with the Adminis-  
 15 trator for Federal Procurement Policy, shall jointly  
 16 issue—

17 (1) such procedural rules and regulations as are  
 18 necessary to the exercise of the functions of the De-  
 19 partment of Defense Board of Contract Appeals and

1 the Civilian Board of Contract Appeals under sec-  
2 tions 211 of the Office of Federal Procurement Pol-  
3 icy Act (as added by this title); and

4 (2) statements of policy of general applicability  
5 with respect to such functions.

6 (b) REGULATIONS REGARDING APPOINTMENT OF  
7 JUDGES.—Not later than 1 year after the date of the en-  
8 actment of this Act—

9 (1) the Chairman of the Armed Services Board  
10 of Contract Appeals shall issue rules governing the  
11 establishment and maintenance of a register of eligi-  
12 ble applicants and the selection of judges for the De-  
13 partment of Defense Board of Contract Appeals;  
14 and

15 (2) the Administrator for Federal Procurement  
16 Policy shall issue rules governing the establishment  
17 and maintenance of a register of eligible applicants  
18 and the selection of judges for the Civilian Board of  
19 Contract Appeals.

20 **SEC. 253. APPOINTMENT OF CHAIRMEN OF DEFENSE**  
21 **BOARD AND CIVILIAN BOARD.**

22 Notwithstanding section 251, not later than 1 year  
23 after the date of the enactment of this Act—

1           (1) the Secretary of Defense shall appoint the  
2 Chairman of the Department of Defense Board of  
3 Contract Appeals; and

4           (2) the Administrator for Federal Procurement  
5 Policy shall appoint the Chairman of the Civilian  
6 Board of Contract Appeals.

○