

103^D CONGRESS
2^D SESSION

S. 2207

AN ACT

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

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

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

3 **SECTION 1. SHORT TITLE.**

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

1 SEC. 2. TABLE OF CONTENTS.

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1 TITLE I—CONTRACT FORMATION

2 Subtitle A—Competition Statutes

3 PART I—ARMED SERVICES ACQUISITIONS

4 Subpart A—Competition Requirements

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

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

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

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

1 **SEC. 1002. ESTABLISHMENT OR MAINTENANCE OF ALTER-**
2 **NATIVE SOURCES OF SUPPLY.**

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

5 (1) in paragraph (1)—

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

8 (B) by striking out the period at the end
9 of subparagraph (C) and inserting in lieu there-
10 of a semicolon; and

11 (C) by adding at the end the following new
12 subparagraphs:

13 “(D) would ensure the continuous availability of
14 a reliable source of supply of such property or serv-
15 ice;

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

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

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

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

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

4 (4) in paragraph (4), as redesignated by para-
5 graph (2), by striking out “paragraphs (1) and (2)”
6 and inserting in lieu thereof “paragraphs (1) and
7 (3)”.

8 **SEC. 1003. CLARIFICATION OF APPROVAL AUTHORITY FOR**
9 **USE OF PROCEDURES OTHER THAN FULL**
10 **AND OPEN COMPETITION.**

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

15 **SEC. 1004. TASK ORDER CONTRACTS FOR ADVISORY AND**
16 **ASSISTANCE SERVICES.**

17 (a) AUTHORITY.—

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

21 **“§ 2304a. Task order contracts for advisory and as-**
22 **sistance services**

23 “(a) AUTHORITY TO AWARD.—(1) Subject to the re-
24 quirements of this section, the head of an agency may
25 enter into a contract for advisory and assistance services

1 that does not procure or specify a firm quantity of services
2 (other than a minimum or maximum quantity) and that
3 provides for the issuance of task orders during the speci-
4 fied period of the contract.

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

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

14 “(c) CONTRACT PROCEDURES.—(1) The head of an
15 agency may use procedures other than competitive proce-
16 dures to enter into a contract referred to in subsection
17 (a) only if an exception in subsection (c) of section 2304
18 of this title applies to the contract and the use of such
19 procedures is approved in accordance with subsection (f)
20 of such section.

21 “(2) The notice required by section 18 of the Office
22 of Federal Procurement Policy Act (41 U.S.C. 416) and
23 section 8(e) of the Small Business Act (15 U.S.C. 637(e))
24 shall reasonably and fairly describe the general scope,
25 magnitude, and duration of the proposed contract in a

1 manner that would reasonably enable a potential offeror
2 to decide whether to request the solicitation and consider
3 submitting an offer.

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

5 “(A) The period of the contract, including the
6 number of options to extend the contract and the pe-
7 riod for which the contract may be extended under
8 each option, if any.

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

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

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

20 “(B) If, in the case of a contract for advisory and
21 assistance services to be entered into under the authority
22 of this section, the contract period is to exceed 3 years
23 and the contract amount is estimated to exceed
24 \$10,000,000 (including all options), the solicitation
25 shall—

1 “(i) provide for a multiple award authorized
2 under subparagraph (A); and

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

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

13 “(5) A contract referred to in subsection (a) shall
14 contain the same information that is required by para-
15 graph (3) to be included in the solicitation of offers for
16 that contract.

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

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

24 “(B) Except as provided in paragraph (2), a
25 competition (or a waiver of competition approved in

1 accordance with section 2304(f) of this title) that is
2 separate from that used for entering into the con-
3 tract.

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

10 “(i) the agency’s need for the services ordered
11 is of such unusual urgency that competition would
12 result in unacceptable delays in fulfilling the agen-
13 cy’s needs;

14 “(ii) only one such contractor is capable of pro-
15 viding the services required at the level of quality re-
16 quired because the services ordered are unique or so
17 highly specialized;

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

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

24 “(B) When a task order is issued in accordance with
25 subparagraph (A), the order shall include a statement of

1 work that clearly specifies all tasks to be performed under
2 the order.

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

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

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

19 “(3) Notice regarding the modification shall be pro-
20 vided in accordance with section 18 of the Office of Fed-
21 eral Procurement Policy Act (41 U.S.C. 416) and section
22 8(e) of the Small Business Act (15 U.S.C. 637(e)).

23 “(4)(A) Notwithstanding the limitation on the con-
24 tract period set forth in subsection (b) or in a solicitation
25 or contract pursuant to subsection (c), a contract entered

1 into by the head of an agency under this section may be
2 extended on a sole-source basis for a period not exceeding
3 6 months if the agency head determines that—

4 “(i) the award of a follow-on contract has been
5 delayed by circumstances that were not reasonably
6 foreseeable at the time the initial contract was en-
7 tered into; and

8 “(ii) the extension is necessary in order to en-
9 sure continuity of the receipt of services pending the
10 award of, and commencement of performance under,
11 the follow-on contract.

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

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

1 “(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—

2 This section does not apply to a contract for the acquisi-
3 tion of property or services that includes acquisition of ad-
4 visory and assistance services if the head of an agency en-
5 tering into such contract determines that, under the con-
6 tract, advisory and assistance services are necessarily inci-
7 dent to, and not a significant component of, the contract.

8 “(h) RELATIONSHIP TO OTHER CONTRACTING AU-

9 THORITY.—Nothing in this section may be construed to
10 limit the authority of the head of an agency to enter into
11 single or multiple task order contracts, or single or mul-
12 tiple delivery order contracts, for property or services
13 (other than advisory and assistance services) under other
14 provisions of this chapter or under any other provision of
15 law.

16 “(i) ADVISORY AND ASSISTANCE SERVICES DE-

17 FINED.—In this section, the term ‘advisory and assistance
18 services’ has the meaning given such term in section
19 1105(g) of title 31.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-

21 tions at the beginning of such chapter is amended
22 by inserting after the item relating to section 2304
23 the following new item:

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

1 (b) REPEAL OF SUPERSEDED PROVISION.—Section
2 2304 of title 10, United States Code, is amended by strik-
3 ing out subsection (j).

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

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

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

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

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

1 **Subpart B—Planning, Solicitation, Evaluation, and**
2 **Award**

3 **SEC. 1011. SOURCE SELECTION FACTORS.**

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

6 (1) in paragraph (2)—

7 (A) in subparagraph (A)(i), by striking out
8 “nonprice-related factors)” and inserting in lieu
9 thereof “nonprice-related factors and
10 subfactors)”; and

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

14 “(I) either a statement that the pro-
15 posals are intended to be evaluated with,
16 and award made after, discussions with the
17 offerors, or a statement that the proposals
18 are intended to be evaluated, and award
19 made, without discussions with the offerors
20 (other than discussions conducted for the
21 purpose of minor clarification) unless dis-
22 cussions are determined to be necessary;
23 and”;

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

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

4 “(i) shall clearly establish the relative impor-
5 tance assigned to the evaluation factors and
6 subfactors, including the quality of the product or
7 services to be provided (including technical capabil-
8 ity, management capability, prior experience, and
9 past performance of the offeror);

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

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

16 “(I) significantly more important than cost
17 or price;

18 “(II) approximately equal in importance to
19 cost or price; or

20 “(III) significantly less important than
21 cost or price.

22 “(B) Nothing in this paragraph prohibits an agency
23 from—

1 “(i) providing additional information in a solicitation, including numeric weights for all evaluation
2 factors; or

3 “(ii) stating in a solicitation that award will be
4 made to the offeror that meets the solicitation’s
5 mandatory requirements at the lowest cost or
6 price.”.

7
8 **SEC. 1012. SOLICITATION PROVISION REGARDING EVALUA-**
9 **TION OF PURCHASE OPTIONS.**

10 (a) **OPTIONS FOR ADDITIONAL PURCHASES.**—Sub-
11 section (a) of section 2305 of title 10, United States Code,
12 as amended by section 1011, is further amended by adding
13 at the end the following new paragraph:

14 “(4) The head of an agency, in issuing a solicitation
15 for a contract to be awarded using sealed bid procedures,
16 may not include in such solicitation a clause providing for
17 the evaluation of prices for options to purchase additional
18 property or services under the contract unless the head
19 of the agency has determined that there is a reasonable
20 likelihood that the options will be exercised.”.

21 (b) **REPEAL OF SUPERSEDED PROVISION.**—Section
22 2301(a) of such title is amended—

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

24 (2) by inserting “and” at the end of paragraph

25 (5); and

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

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

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

11 (b) COMPETITIVE PROPOSALS PROCEDURES.—Sec-
12 tion 2305(b)(4)(B) of title 10, United States Code, is
13 amended in the second sentence by striking out “source
14 and shall promptly notify” and inserting in lieu thereof
15 “source. As soon as practicable after the date of contract
16 award, the head of the agency shall, in accordance with
17 procedures prescribed in the Federal Acquisition Regula-
18 tion, notify”.

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

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

22 (1) by redesignating paragraph (5) as para-
23 graph (6); and

24 (2) by inserting after paragraph (4) the follow-
25 ing new paragraph (5):

1 “(5)(A) When a contract is awarded by the head of
2 an agency on the basis of competitive proposals, an unsuccessful
3 offeror, upon written request received by the agency
4 within 3 days after the date on which the unsuccessful
5 offeror receives the notification of the contract award,
6 shall be debriefed and furnished the basis for the selection
7 decision and contract award. An employee of the agency
8 shall debrief the offeror promptly after receipt of the request
9 by the agency.

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

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

13 “(ii) the overall evaluated cost and technical
14 rating of the offer of the contractor awarded the
15 contract and the overall evaluated cost and technical
16 rating of the offer of the debriefed offeror;

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

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

19 “(v) in the case of a proposal for a commercial
20 item other than a commercial component, the make
21 and model of the item being provided in accordance
22 with the offer of the contractor awarded the contract;
23 and

24 “(vi) reasonable responses to questions posed by
25 the debriefed offeror as to whether source selection

1 procedures set forth in the solicitation, applicable
2 regulations, and other applicable authorities were
3 followed by the agency.

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

9 “(i) trade secrets;

10 “(ii) privileged or confidential manufacturing
11 processes and techniques; and

12 “(iii) commercial and financial information that
13 is privileged or confidential, including cost break-
14 downs, profit, indirect cost rates, and similar infor-
15 mation.

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

19 “(E) If, within one year after the date of the contract
20 award and as a result of a successful procurement protest
21 or otherwise, the agency seeks to fulfill the requirement
22 under the contract either on the basis of a new solicitation
23 of offers or on the basis of new best and final offers re-
24 quested for that contract, the agency shall make available
25 to all offerors—

1 “(i) the information provided in debriefings
2 under this paragraph regarding the offer of the con-
3 tractor awarded the contract; and

4 “(ii) the same information that would have been
5 provided to the original offerors.

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

8 **SEC. 1015. PROTEST FILE.**

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

11 “(e)(1) If, in the case of a solicitation for a contract
12 issued by, or an award or proposed award of a contract
13 by, the head of an agency, a protest is filed pursuant to
14 the procedures in subchapter V of chapter 35 of title 31
15 and an actual or prospective offeror so requests, a file of
16 the protest shall be established by the procuring activity
17 and reasonable access shall be provided to actual or pro-
18 spective offerors.

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

23 “(3) Regulations implementing this subsection shall
24 be consistent with the regulations regarding the prepara-
25 tion and submission of an agency’s protest file (the so-

1 called ‘rule 4 file’) for protests to the General Services
 2 Board of Contract Appeals under section 111 of the Fed-
 3 eral Property and Administrative Services Act of 1949 (41
 4 U.S.C. 759).”.

5 **SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
 6 **MENT OF PROTESTS.**

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

10 “(f) If, in connection with a protest, the head of an
 11 agency determines that a solicitation, proposed award, or
 12 award does not comply with the requirements of law or
 13 regulation, the head of the agency may take—

14 “(1) any action set out in subparagraphs (A)
 15 through (F) of subsection (b)(1) of section 3554 of
 16 title 31; and

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

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

21 (a) **PROCEDURES AUTHORIZED.**—Chapter 137 of
 22 title 10, United States Code, is amended by inserting after
 23 section 2305 the following new section:

1 **“§ 2305a. Two-phase selection procedures**

2 “(a) PROCEDURES AUTHORIZED.—The head of an
3 agency may use two-phase selection procedures for enter-
4 ing into a contract for the acquisition of property or serv-
5 ices (other than a construction contract) when the head
6 of the agency determines that three or more offers will
7 be received for such contract, substantial design work
8 must be performed before an offeror can develop a price
9 or cost proposal for such contract, and the offerors will
10 incur a substantial amount of expenses in preparing the
11 offers.

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

14 “(1) The head of the agency solicits proposals
15 that—

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

17 “(i) technical approach; and

18 “(ii) technical qualifications; and

19 “(B) do not include—

20 “(i) detailed design information; or

21 “(ii) cost or price information.

22 “(2) The head of the agency evaluates the pro-
23 posals on the basis of evaluation criteria set forth in
24 the solicitation, except that the head of the agency
25 does not consider cost-related or price-related eval-
26 uation factors.

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

6 “(4) The head of the agency awards the con-
 7 tract in accordance with section 2305(b)(4) of this
 8 title.

9 “(c) SOLICITATION TO STATE NUMBER OF
 10 OFFERORS TO BE SELECTED FOR PHASE TWO RE-
 11 QUESTS FOR COMPETITIVE PROPOSALS.—A solicitation
 12 issued pursuant to subsection (b)(1) shall state the maxi-
 13 mum number of offerors that are to be selected to submit
 14 competitive proposals pursuant to subsection (b)(3).

15 “(d) RESOURCE COMPARISON CRITERION RE-
 16 QUIRED.—In using two-phase selection procedures for en-
 17 tering into a contract, the head of the agency shall estab-
 18 lish a resource criterion or a financial criterion applicable
 19 to the contract in order to provide a consistent basis for
 20 comparing the offerors and their proposals.”.

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

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

Subpart C—Kinds of Contracts

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

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

SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

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

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

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

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

1 **PART II—CIVILIAN AGENCY ACQUISITIONS**

2 **Subpart A—Competition Requirements**

3 **SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGU-**
4 **LATION.**

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

7 (1) in subsection (a)(1)(A), by striking out
8 “modifications” and all that follows through “of
9 1984” and inserting in lieu thereof “Federal Acqui-
10 sition Regulation”; and

11 (2) in subsection (g)(1), by striking out “regu-
12 lations modified” and all that follows through “of
13 1984,” and inserting in lieu thereof “Federal Acqui-
14 sition Regulation”.

15 **SEC. 1052. ESTABLISHMENT OR MAINTENANCE OF ALTER-**
16 **NATIVE SOURCES OF SUPPLY.**

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

20 (1) in paragraph (1)—

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

23 (B) by striking out the period at the end
24 of subparagraph (C) and inserting in lieu there-
25 of a semicolon; and

1 (C) by adding at the end the following new
2 subparagraphs:

3 “(D) would ensure the continuous availability of
4 a reliable source of supply of such property or serv-
5 ice;

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

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

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

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

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

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

1 **SEC. 1053. CLARIFICATION OF APPROVAL AUTHORITY FOR**
2 **USE OF PROCEDURES OTHER THAN FULL**
3 **AND OPEN COMPETITION.**

4 Section 303(f)(1)(B)(i) of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C.
6 253(f)(1)(B)(i)) is amended by inserting before the semi-
7 colon at the end the following: “or by an official referred
8 to in clause (ii), (iii), or (iv)”.

9 **SEC. 1054. TASK ORDER CONTRACTS FOR ADVISORY AND**
10 **ASSISTANCE SERVICES.**

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

15 “TASK ORDER CONTRACTS FOR ADVISORY AND
16 ASSISTANCE SERVICES

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

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

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

7 “(c) CONTRACT PROCEDURES.—(1) An agency head
8 may use procedures other than competitive procedures to
9 enter into a contract referred to in subsection (a) only if
10 an exception in subsection (c) of section 303 applies to
11 the contract and the use of such procedures is approved
12 in accordance with subsection (f) of such section.

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

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

22 “(A) The period of the contract, including the
23 number of options to extend the contract and the pe-
24 riod for which the contract may be extended under
25 each option, if any.

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

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

7 “(4)(A) An agency head may, on the basis of one so-
8 licitation, award separate contracts under this section for
9 the same or similar services to two or more sources if the
10 solicitation states that the agency head has the option to
11 do so.

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

18 “(i) provide for a multiple award authorized
19 under subparagraph (A); and

20 “(ii) include a statement that the agency head
21 may also elect to award only one contract if the
22 agency head determines in writing that only one of
23 the offerers is capable of providing the services re-
24 quired at the level of quality required.

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

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

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

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

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

21 “(2)(A) When multiple contracts are awarded pursu-
22 ant to subsection (c)(4), all contractors awarded such con-
23 tracts shall be provided a fair opportunity to be consid-
24 ered, pursuant to procedures set forth in the contracts,

1 for each task order in excess of \$2,500 that is to be issued
2 under any of the contracts unless—

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

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

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

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

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

21 “(3) A protest is not authorized in connection with
22 the issuance or proposed issuance of a task order except
23 for a protest on the ground that the order increases the
24 scope, period, or maximum value of the contract under
25 which the order is issued.

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

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

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

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

22 “(i) the award of a follow-on contract has been
23 delayed by circumstances that were not reasonably
24 foreseeable at the time the initial contract was en-
25 tered into; and

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

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

8 “(f) TASK ORDER OMBUDSMAN.—Each agency head
9 who awards multiple contracts pursuant to subsection
10 (c)(4) shall appoint or designate a task order ombudsman
11 who shall be responsible for reviewing complaints from the
12 contractors on such contracts and ensuring that all of the
13 contractors are afforded a fair opportunity to be consid-
14 ered for task orders when required under subsection
15 (d)(2). The task order ombudsman shall be a senior agen-
16 cy official who is independent of the contracting officer
17 for the contracts and may be the agency’s competition ad-
18 vocate.

19 “(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—
20 This section does not apply to a contract for the acquisi-
21 tion of property or services that includes acquisition of ad-
22 visory and assistance services if the agency head entering
23 into such contract determines that, under the contract, ad-
24 visory and assistance services are necessarily incident to,
25 and not a significant component of, the contract.

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

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

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

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

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

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

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

22 (2) by inserting before the semicolon at the end
 23 the following: “, or (C) to procure the services of an
 24 expert for use, in any litigation or dispute (including
 25 any reasonably foreseeable litigation or dispute) in-

1 volving the Federal Government, in any trial, hear-
2 ing, or proceeding before any court, administrative
3 tribunal, or agency, or in any part of an alternative
4 dispute resolution process, whether or not the expert
5 is expected to testify”.

6 (b) PROCUREMENT NOTICE.—

7 (1) AMENDMENT OF OFFICE OF FEDERAL PRO-
8 CUREMENT POLICY ACT.—Section 18(c) of the Office
9 of Federal Procurement Policy Act (41 U.S.C.
10 416(c)) is amended—

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

13 (B) by striking out the period at the end
14 of subparagraph (E) and inserting in lieu there-
15 of “; or”; and

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

17 “(F) the procurement is for the services of an
18 expert for use in any litigation or dispute (including
19 any reasonably foreseeable litigation or dispute) in-
20 volving the Federal Government in any trial, hear-
21 ing, or proceeding before any court, administrative
22 tribunal, or agency, or in any part of an alternative
23 dispute resolution process, whether or not the expert
24 is expected to testify.”.

1 (2) AMENDMENT OF SMALL BUSINESS ACT.—

2 Section 8(g) of the Small Business Act (15 U.S.C.
3 637(c)) is amended—

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

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

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

10 “(F) the procurement is for the services of an
11 expert for use in any litigation or dispute (including
12 preparation for any foreseeable litigation or dispute)
13 that involves or could involve the Federal Govern-
14 ment in any trial, hearing, or proceeding before any
15 court, administrative tribunal, or agency, or in any
16 part of an alternative dispute resolution process,
17 whether or not the expert is expected to testify.”.

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

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

23 (2) Section 529 of Public Law 102–393 (106
24 Stat. 1761) and the matters inserted and added by
25 that section.

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

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

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

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

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

19 “(i) the occupying agency has a continuing need
20 for the space;

21 “(ii) the space meets the needs of the agency;
22 and

23 “(iii) the lessor is willing to continue to provide
24 the space at a fair market price determined by the
25 contracting officer on the basis of a market survey

1 or an appraisal conducted in accordance with gen-
 2 erally accepted real property appraisal standards.

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

9 “(C) Nothing in this paragraph may be construed to
 10 prohibit the use of procedures other than competitive pro-
 11 cedures to enter into a follow-on lease of real property for
 12 continued occupancy of particular space in real property
 13 by a Federal agency when an exception set forth in sub-
 14 section (c) applies and the use of such procedures is justi-
 15 fied and approved in accordance with subsection (f).”.

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

18 **SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.**

19 (a) CONTENT OF SOLICITATION.—Section 303A of
 20 the Federal Property and Administrative Services Act of
 21 1949 (41 U.S.C. 253a) is amended—

22 (1) in subsection (b)(1)(A)—

23 (A) by inserting “and significant
 24 subfactors” after “all significant factors”; and

1 (B) by striking out “(including price)” and
2 inserting “(including cost or price, cost-related
3 or price-related factors and subfactors, and
4 noncost-related or nonprice-related factors and
5 subfactors)”;

6 (2) in subsection (b)(1)(B), by inserting “and
7 subfactors” after “factors”;

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

10 “(i) either a statement that the pro-
11 posals are intended to be evaluated with,
12 and award made after, discussions with the
13 offerors, or a statement that the proposals
14 are intended to be evaluated, and award
15 made, without discussions with the offerors
16 (other than discussions conducted for the
17 purpose of minor clarification) unless dis-
18 cussions are determined to be necessary;
19 and”; and

20 (4) by adding at the end the following new sub-
21 section:

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

1 “(A) shall clearly establish the relative impor-
2 tance assigned to the evaluation factors and
3 subfactors, including the quality of the product or
4 services to be provided (including technical capabil-
5 ity, management capability, prior experience, and
6 past performance of the offeror);

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

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

13 “(i) significantly more important than cost
14 or price;

15 “(ii) approximately equal in importance to
16 cost or price; or

17 “(iii) significantly less important than cost
18 or price.

19 “(2) Nothing in this subsection prohibits an agency
20 from—

21 “(A) providing additional information in a solici-
22 tation, including numeric weights for all evaluation
23 factors; or

24 “(B) stating in a solicitation that award will be
25 made to the offeror that meets the solicitation’s

1 mandatory requirements at the lowest price or
2 cost.”.

3 (b) EVALUATION AND AWARD.—Section 303B of the
4 Federal Property and Administrative Services Act of 1949
5 (41 U.S.C. 253b) is amended—

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

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

11 (3) in subsection (d)—

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

14 “(1) An agency head shall evaluate competitive pro-
15 posals in accordance with subsection (a) and may award
16 a contract—

17 “(A) after discussions with the offerors, pro-
18 vided that written or oral discussions have been con-
19 ducted with all responsible offerors who submit pro-
20 posals within the competitive range; or

21 “(B) based on the proposals received and with-
22 out discussions with the offerors (other than discus-
23 sions conducted for the purpose of minor clarifica-
24 tion), provided that, as required by section
25 303A(b)(2)(B)(i), the solicitation included a state-

1 ment that proposals are intended to be evaluated,
2 and award made, without discussions, unless discus-
3 sions are determined to be necessary.”;

4 (B) by striking out paragraphs (2) and (3)
5 and by redesignating paragraph (4) as para-
6 graph (2); and

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

10 (c) APPLICABILITY.—

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

14 (A) solicitations for sealed bids or competi-
15 tive proposals issued after the end of the 180-
16 day period beginning on the date of the enact-
17 ment of this Act; and

18 (B) contracts awarded pursuant to those
19 solicitations.

20 (2) AUTHORITY TO APPLY AMENDMENTS
21 EARLY.—The head of an executive agency may apply
22 the amendments made by this section to solicitations
23 issued before the end of the period referred to in
24 paragraph (1). The head of the executive agency
25 shall publish in the Federal Register notice of any

1 such earlier date of application at least 10 days be-
2 fore that date.

3 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**
4 **TION OF PURCHASE OPTIONS.**

5 Section 303A of the Federal Property and Adminis-
6 trative Services Act of 1949 (41 U.S.C. 253a), as amend-
7 ed by section 1061(a)(4), is further amended by adding
8 at the end the following new subsection:

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

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

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

1 (b) COMPETITIVE PROPOSALS PROCEDURES.—Para-
2 graph (2) of section 303B(d) of the Federal Property and
3 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),
4 as redesignated by section 1061(b)(3)(B), is amended in
5 the second sentence by striking out “source and shall
6 promptly notify” and inserting in lieu thereof “source. As
7 soon as practicable after the date of contract award, the
8 agency head shall, in accordance with procedures pre-
9 scribed in the Federal Acquisition Regulation, notify”.

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

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

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

16 (2) by inserting after subsection (d) the follow-
17 ing new subsection (e):

18 “(e)(1) When a contract is awarded by the head of
19 an executive agency on the basis of competitive proposals,
20 an unsuccessful offeror, upon written request received by
21 the agency within 3 days after the date on which the un-
22 successful offeror receives the notification of the contract
23 award, shall be debriefed and furnished the basis for the
24 selection decision and contract award. An employee of the

1 executive agency shall debrief the offeror promptly after
2 receipt of the request by the agency.

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

4 “(A) the executive agency’s evaluation of the
5 significant weak or deficient factors in the offeror’s
6 offer;

7 “(B) the overall evaluated cost and technical
8 rating of the offer of the contractor awarded the
9 contract and the overall evaluated cost and technical
10 rating of the offer of the debriefed offeror;

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

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

13 “(E) in the case of a proposal for a commercial
14 item other than a commercial component, the make
15 and model of the item being provided in accordance
16 with the offer of the contractor awarded the con-
17 tract; and

18 “(F) reasonable responses to questions posed by
19 the debriefed offeror as to whether source selection
20 procedures set forth in the solicitation, applicable
21 regulations, and other applicable authorities were
22 followed by the executive agency.

23 “(3) The debriefing may not include point-by-point
24 comparisons of the debriefed offeror’s offer with other of-
25 fers and may not disclose any information that is exempt

1 from disclosure under section 552 of title 5, United States
2 Code, including information relating to—

3 “(A) trade secrets;

4 “(B) privileged or confidential manufacturing
5 processes and techniques; and

6 “(C) commercial and financial information that
7 is privileged or confidential, including cost break-
8 downs, profit, indirect cost rates, and similar infor-
9 mation.

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

13 “(5) If, within one year after the date of the contract
14 award and as a result of a successful procurement protest
15 or otherwise, the executive agency seeks to fulfill the re-
16 quirement under the contract either on the basis of a new
17 solicitation of offers or on the basis of new best and final
18 offers requested for that contract, the agency head shall
19 make available to all offerors—

20 “(A) the information provided in debriefings
21 under this subsection regarding the offer of the con-
22 tractor awarded the contract; and

23 “(B) the same information that would have
24 been provided to the original offerors.

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

3 **SEC. 1065. PROTEST FILE.**

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

8 “(h)(1) If, in the case of a solicitation for a contract
9 issued by, or an award or proposed award of a contract
10 by, an agency head, a protest is filed pursuant to the pro-
11 cedures in subchapter V of chapter 35 of title 31, United
12 States Code, and an actual or prospective offeror so re-
13 quests, a file of the protest shall be established by the pro-
14 curing activity and reasonable access shall be provided to
15 actual or prospective offerors.

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

20 “(3) Regulations implementing this subsection shall
21 be consistent with the regulations regarding the prepara-
22 tion and submission of an agency’s protest file (the so-
23 called ‘rule 4 file’) for protests to the General Services
24 Board of Contract Appeals under section 111 of the Fed-

1 eral Property and Administrative Services Act of 1949 (41
2 U.S.C. 759).”.

3 **SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
4 **MENT OF PROTESTS.**

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

9 “(i) If, in connection with a protest, an agency head
10 determines that a solicitation, proposed award, or award
11 does not comply with the requirements of law or regula-
12 tion, the agency head may take—

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

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

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

20 (a) **PROCEDURES AUTHORIZED.**—Title III of the
21 Federal Property and Administrative Services Act of 1949
22 (41 U.S.C. 251 et seq.), as amended by section 1054, is
23 further amended by inserting after section 303H the fol-
24 lowing new section:

1 “TWO-PHASE SELECTION PROCEDURES

2 “SEC. 303I. (a) PROCEDURES AUTHORIZED.—The
3 head of an executive agency may use two-phase selection
4 procedures for entering into a contract for the acquisition
5 of property or services (other than a construction con-
6 tract) when the agency head determines that three or
7 more offers will be received for such contract, substantial
8 design work must be performed before an offeror can de-
9 velop a price or cost proposal for such contract, and the
10 offerors will incur a substantial amount of expenses in pre-
11 paring the offers.

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

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

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

16 “(i) technical approach; and

17 “(ii) technical qualifications; and

18 “(B) do not include—

19 “(i) detailed design information; or

20 “(ii) cost or price information.

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

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

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

8 “(c) SOLICITATION TO STATE NUMBER OF
9 OFFERORS TO BE SELECTED FOR PHASE TWO RE-
10 QUESTS FOR COMPETITIVE PROPOSALS.—A solicitation
11 issued pursuant to subsection (b)(1) shall state the maxi-
12 mum number of offerors that are to be selected to submit
13 competitive proposals pursuant to subsection (b)(3).

14 “(d) RESOURCE COMPARISON CRITERION RE-
15 QUIRED.—In using two-phase selection procedures for en-
16 tering into a contract, the agency head shall establish a
17 resource criterion or a financial criterion applicable to the
18 contract in order to provide a consistent basis for compar-
19 ing the offerors and their proposals.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 in the first section of such Act, as amended by section
22 1054, is further amended by inserting after the item relat-
23 ing to section 303H the following new item:

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

1 **Subpart C—Kinds of Contracts**

2 **SEC. 1071. AGENCY HEAD DETERMINATION REGARDING**
 3 **USE OF COST TYPE OR INCENTIVE CON-**
 4 **TRACT.**

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

8 **SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.**

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

13 “MULTIYEAR CONTRACTS

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

17 “(1) funds are available and obligated for such
 18 contract, for the full period of the contract or for the
 19 first fiscal year in which the contract is in effect,
 20 and for the estimated costs associated with any nec-
 21 essary termination of such contract; and

22 “(2) the agency head determines that—

23 “(A) the need for the property or services
 24 is reasonably firm and continuing over the pe-
 25 riod of the contract; and

1 “(B) a multiyear contract will serve the
2 best interests of the United States by encourag-
3 ing effective competition or promoting economy
4 in administration, performance, and operation
5 of the agency’s programs.

6 “(b) TERMINATION CLAUSE.—A multiyear contract
7 entered into under the authority of this section shall in-
8 clude a clause that provides that the contract shall be ter-
9 minated if funds are not made available for the continu-
10 ation of such contract in any fiscal year covered by the
11 contract. Amounts available for paying termination costs
12 shall remain available for such purpose until the costs as-
13 sociated with termination of the contract are paid.

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

17 (b) CLERICAL AMENDMENT.—The table of contents
18 in the first section of such Act, as amended by section
19 1067, is further amended by inserting after the item relat-
20 ing to section 303I the following new item:

“Sec. 303J. Multiyear contracts.”.

21 **SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING**
22 **FISCAL YEARS.**

23 (a) AUTHORITY.—Title III of the Federal Property
24 and Administrative Services Act of 1949 (41 U.S.C. 251

1 et seq.), as amended by section 1072, is further amended
 2 by inserting after section 303J the following new section:

3 “SEVERABLE SERVICES CONTRACTS FOR PERIODS
 4 CROSSING FISCAL YEARS

5 “SEC. 303K. (a) AUTHORITY.—The head of an execu-
 6 tive agency may enter into a contract for procurement
 7 of severable services for a period that begins in one fiscal
 8 year and ends in the next fiscal year if (without regard
 9 to any option to extend the period of the contract) the
 10 contract period does not exceed one year.

11 “(b) OBLIGATION OF FUNDS.—Funds made available
 12 for a fiscal year may be obligated for the total amount
 13 of a contract entered into under the authority of sub-
 14 section (a).”.

15 (b) CLERICAL AMENDMENT.—The table of contents
 16 in the first section of such Act, as amended by section
 17 1072, is further amended by inserting after the item relat-
 18 ing to section 303J the following new item:

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

19 **SEC. 1074. ECONOMY ACT PURCHASES.**

20 (a) REGULATIONS REQUIRED.—Not later than six
 21 months after the date of the enactment of this Act, the
 22 Federal Acquisition Regulation shall be revised to include
 23 regulations governing the exercise of the authority under
 24 section 1535 of title 31, United States Code, for Federal

1 agencies to purchase goods and services under contracts
2 entered into or administered by other agencies.

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

5 (1) require that each purchase described in sub-
6 section (a) be approved in advance by a contracting
7 officer of the ordering agency with authority to con-
8 tract for the goods or services to be purchased or by
9 another official in a position specifically designated
10 by regulation to approve such purchase;

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

13 (A) the purchase is appropriately made
14 under a contract that the agency filling the pur-
15 chase order entered into, before the purchase
16 order, in order to meet the requirements of
17 such agency for the same or similar goods or
18 services;

19 (B) the agency filling the purchase order is
20 better qualified to enter into or administer the
21 contract for such goods or services by reason of
22 capabilities or expertise that is not available
23 within the ordering agency; or

24 (C) the agency or unit filling the order is
25 specifically authorized by law or regulations to

1 purchase such goods or services on behalf of
2 other agencies;

3 (3) prohibit any such purchase under a contract
4 or other agreement entered into or administered by
5 an agency not covered by the provisions of chapter
6 137 of title 10, United States Code, or title III of
7 the Federal Property and Administrative Services
8 Act of 1949 (41 U.S.C. 251 et seq.) and not covered
9 by the Federal Acquisition Regulation unless the
10 purchase is approved in advance by the senior pro-
11 curement official responsible for purchasing by the
12 ordering agency; and

13 (4) prohibit any payment to the agency filling
14 a purchase order of any fee that exceeds the actual
15 cost or, if the actual cost is not known, the esti-
16 mated cost of entering into and administering the
17 contract or other agreement under which the order
18 is filled.

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

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

4 **PART III—ACQUISITIONS GENERALLY**

5 **SEC. 1091. POLICY REGARDING CONSIDERATION OF CON-**
 6 **TRACTOR PAST PERFORMANCE.**

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

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

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

14 (3) by adding at the end the following new
 15 paragraph:

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

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

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

23 “(A) Past contract performance of an offeror is
 24 one of the relevant factors that contracting officials

1 of executive agencies should consider in entering into
2 contracts.

3 “(B) It is appropriate for a contracting official
4 to consider past contract performance of an offeror
5 as an indicator of the likelihood that the offeror will
6 successfully perform a contract to be entered into by
7 that official.

8 “(2) The Administrator shall prescribe for executive
9 agencies guidance regarding consideration of the past con-
10 tract performance of offerors in awarding contracts. The
11 guidance shall include—

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

18 “(B) policies for the collection and maintenance
19 of information on past contract performance that, to
20 the maximum extent practicable, facilitate auto-
21 mated collection, maintenance, and dissemination of
22 information and provide for ease of collection, main-
23 tenance, and dissemination of information by other
24 methods, as necessary; and

25 “(C) policies for ensuring that—

1 “(i) offerors are afforded an opportunity to
2 submit relevant information on past contract
3 performance, including performance under con-
4 tracts entered into by the executive agency con-
5 cerned, contracts entered into by other depart-
6 ments and agencies of the Federal Government,
7 contracts entered into by agencies of State and
8 local governments, and contracts entered into
9 by commercial customers; and

10 “(ii) such information submitted by
11 offerors is considered.

12 “(3) The Administrator shall prescribe for all execu-
13 tive agencies guidance regarding the period for which in-
14 formation on past performance of offerors should be main-
15 tained and considered.

16 “(4) In the case of an offeror regarding whom there
17 is no information on past contract performance or regard-
18 ing whom information on past contract performance is not
19 available, the offeror may not be evaluated favorably or
20 unfavorably on the factor of past contract performance.”.

21 **SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
22 **PORT ON COMPETITION.**

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

1 **Subtitle B—Truth in Negotiations**

2 **PART I—ARMED SERVICES ACQUISITIONS**

3 **SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-**
4 **PLICABILITY.**

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

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

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

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

15 “(7) Effective on October 1 of each year that is divis-
16 ible by 5, each amount set forth in paragraph (1) shall
17 be adjusted to the amount that is equal to the fiscal year
18 1994 constant dollar value of the amount set forth. Any
19 amount, as so adjusted, that is not evenly divisible by
20 \$50,000 shall be rounded to the nearest multiple of
21 \$50,000. In the case of an amount that is evenly divisible
22 by \$25,000 but not evenly divisible by \$50,000, the
23 amount shall be rounded to the next higher multiple of
24 \$50,000.”.

1 **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**
2 **QUIREMENTS.**

3 (a) EXCEPTIONS STATED.—Subsection (b) of section
4 2306a of title 10, United States Code, is amended to read
5 as follows:

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

8 “(A) in the case of a contract, a subcontract,
9 or a contract or subcontract modification, for which
10 the price agreed upon is based on—

11 “(i) adequate price competition;

12 “(ii) established catalog or market prices
13 of commercial items or of services customarily
14 used for other than Government purposes, as
15 the case may be, that are sold in substantial
16 quantities to the general public; or

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

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

22 “(2) Submission of cost and pricing data shall not
23 be required under subsection (a) in the case of a modifica-
24 tion of a contract or subcontract for a commercial item
25 if—

5 “(B) the modification is not a case in which
6 paragraph (1)(A) prohibits the head of an agency
7 from requiring submission of cost and pricing data;
8 and

9 “(C) the modification would not change the
10 contract or subcontract, as the case may be, from a
11 contract or subcontract for the acquisition of a com-
12 mercial item to a contract or subcontract for the ac-
13 quisition of a noncommercial item.”.

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

18 SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUB-
19 MISSION NOT OTHERWISE REQUIRED.

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

22 “(c) LIMITATION ON AUTHORITY TO REQUIRE COST
23 OR PRICING DATA.—When cost or pricing data are not
24 required to be submitted under this section by reason of
25 a \$500,000 threshold set forth in subsection (a) (as ad-

1 justified pursuant to paragraph (7) of such subsection) or
 2 by reason of an exception set forth in paragraph (1)(A)
 3 or (2) of subsection (b), submission of such data may not
 4 be required unless the head of an agency concerned deter-
 5 mines that such data are necessary for the evaluation by
 6 the agency of the reasonableness of the price of the con-
 7 tract or subcontract to which the data relate. In any case
 8 in which the head of an agency requires such data to be
 9 submitted in accordance with the preceding sentence, the
 10 agency head shall document in writing the reasons for
 11 such requirement.”.

12 **SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**
 13 **ITEMS.**

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

16 (1) by redesignating subsections (d), (e), (f),
 17 and (g) as subsections (e), (f), (g), and (i), respec-
 18 tively; and

19 (2) by inserting after subsection (c) the follow-
 20 ing new subsection (d):

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

1 “(2) In any case in which it is not practicable to con-
2 duct a procurement of a commercial item on a competitive
3 basis and the procurement is not covered by an exception
4 in subsection (b), the contracting officer shall nonetheless
5 exempt a contract, subcontract, or modification of a con-
6 tract or subcontract under the procurement from the re-
7 quirements of subsection (a) if the contracting officer ob-
8 tains, in accordance with standards and procedures set
9 forth in the Federal Acquisition Regulation, information
10 on prices at which the same or similar items have been
11 sold in the commercial market that is adequate for evalu-
12 ating the reasonableness of the price of the contract or
13 subcontract for a commercial item, or the contract or sub-
14 contract modification, as the case may be. The contracting
15 officer may obtain such information from the offeror or
16 contractor or, when such information is not available from
17 that source, from another source or sources.

18 “(3)(A) In accordance with procedures prescribed in
19 the Federal Acquisition Regulation, the head of an agency
20 shall have the right to examine all information provided
21 by an offeror, contractor, or subcontractor pursuant to
22 paragraph (2) and all books and records of such offeror,
23 contractor, or subcontractor that directly relate to such
24 information in order to determine whether the agency is
25 receiving accurate information required under this section.

1 “(B) The right under subparagraph (A) shall expire
2 3 years after the date of award of the contract, or 3 years
3 after the date of the modification of the contract, with
4 respect to which the information was provided.”.

5 **SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CON-**
6 **TRACTOR RECORDS.**

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

11 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
12 TRACTOR RECORDS.—For the purpose of evaluating the
13 accuracy, completeness, and currency of cost or pricing
14 data required to be submitted by this section, the head
15 of an agency shall have the rights provided by section
16 2313 of this title.”.

17 **SEC. 1206. REQUIRED REGULATIONS.**

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

22 “(h) REQUIRED REGULATIONS.—The Secretary shall
23 prescribe regulations concerning the types of information
24 that offerors must submit for a contracting officer to con-
25 sider in determining whether the price of a procurement

1 to the Government is fair and reasonable when certified
 2 cost or pricing data are not required to be submitted
 3 under this section because the price of the procurement
 4 to the United States is not expected to exceed an applica-
 5 ble \$500,000 threshold set forth in subsection (a) (as ad-
 6 justed pursuant to paragraph (7) of such subsection).
 7 Such information, at a minimum, shall include appropriate
 8 information on the prices at which the same or similar
 9 items have previously been sold that is adequate for evalu-
 10 ating the reasonableness of the price of the proposed con-
 11 tract or subcontract for the procurement.”.

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

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

15 (1) in subparagraphs (A)(ii) and (B)(ii) of sub-
 16 section (e)(4), by inserting “or, if applicable consist-
 17 ent with paragraph (1)(B), another date agreed
 18 upon between the parties,” after “(or price of the
 19 modification)”; and

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

1 **SEC. 1208. EXCEPTION FOR TRANSFERS BETWEEN DIVI-**
2 **SIONS, SUBSIDIARIES, AND AFFILIATES.**

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

6 “(i) **DEFINITIONS.**—In this section:

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

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

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

19 Subsections (b) and (c) of section 803 of Public Law
20 101–510 (10 U.S.C. 2306a note) are repealed.

1 **PART II—CIVILIAN AGENCY ACQUISITIONS**

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

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

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

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

12 “COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

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

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

22 “(i) in the case of a prime contract entered
23 into after the date of the enactment of the Fed-
24 eral Acquisition Streamlining Act of 1994, the
25 price of the contract to the United States is ex-
26 pected to exceed \$500,000; and

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

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

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

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

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

24 “(C) An offeror for a subcontract (at any tier)
25 of a contract under this title shall be required to

1 submit cost or pricing data before the award of the
2 subcontract if the prime contractor and each higher-
3 tier subcontractor have been required to make avail-
4 able cost or pricing data under this section and—

5 “(i) in the case of a subcontract under a
6 prime contract referred to in subparagraph
7 (A)(i), the price of the subcontract is expected
8 to exceed \$500,000;

9 “(ii) in the case of a subcontract entered
10 into under a prime contract that was entered
11 into on or before the date of the enactment of
12 the Federal Acquisition Streamlining Act of
13 1994, and that has been modified pursuant to
14 paragraph (6), the price of the subcontract is
15 expected to exceed \$500,000; and

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

19 “(D) The subcontractor for a subcontract cov-
20 ered by subparagraph (C) shall be required to sub-
21 mit cost or pricing data before the pricing of a
22 change or modification to the subcontract if—

23 “(i) in the case of a change or modification
24 to a subcontract referred to in subparagraph

1 (C)(i) or (C)(ii), the price adjustment is ex-
2 pected to exceed \$500,000; and

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

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

14 “(3) Cost or pricing data required to be submitted
15 under paragraph (1) (or in accordance with subsection
16 (c)), and a certification required to be submitted under
17 paragraph (2), shall be submitted—

18 “(A) in the case of a submission by a prime
19 contractor (or an offeror for a prime contract), to
20 the contracting officer for the contract (or to a des-
21 ignated representative of the contracting officer); or

22 “(B) in the case of a submission by a sub-
23 contractor (or an offeror for a subcontract), to the
24 prime contractor.

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

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

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

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

22 “(7) Effective on October 1 of each year that is divis-
23 ible by 5, each amount set forth in paragraph (1) shall
24 be adjusted to the amount that is equal to the fiscal year
25 1994 constant dollar value of the amount set forth. Any

1 amount, as so adjusted, that is not evenly divisible by
2 \$50,000 shall be rounded to the nearest multiple of
3 \$50,000. In the case of an amount that is evenly divisible
4 by \$25,000 but not evenly divisible by \$50,000, the
5 amount shall be rounded to the next higher multiple of
6 \$50,000.

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

9 “(A) in the case of a contract, a subcontract,
10 or a contract or subcontract modification, for which
11 the price agreed upon is based on—

12 “(i) adequate price competition;

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

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

19 “(B) in an exceptional case when the agency
20 head concerned determines that the requirements of
21 this section may be waived and states in writing the
22 reasons for such determination.

23 “(2) Submission of cost and pricing data shall not
24 be required under subsection (a) in the case of a modifica-

1 tion of a contract or subcontract for a commercial item
2 if—

3 “(A) the contract or subcontract being modified
4 is a contract or subcontract for which submission of
5 cost and pricing data may not be required by reason
6 of paragraph (1)(A);

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

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

15 “(c) LIMITATION ON AUTHORITY TO REQUIRE COST
16 OR PRICING DATA.—When cost or pricing data are not
17 required to be submitted under this section by reason of
18 a \$500,000 threshold set forth in subsection (a) (as ad-
19 justed pursuant to paragraph (7) of such subsection) or
20 by reason of an exception in paragraph (1)(A) or (2) of
21 subsection (b), submission of such data may not be re-
22 quired unless the agency head concerned determines that
23 such data are necessary for the evaluation by the agency
24 of the reasonableness of the price of the contract or sub-
25 contract to which the data relate. In any case in which

1 the agency head requires such data to be submitted in ac-
2 cordance with the preceding sentence, the agency head
3 shall document in writing the reasons for such require-
4 ment.

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

9 “(2) In any case in which it is not practicable to con-
10 duct a procurement of a commercial item on a competitive
11 basis and the procurement is not covered by an exception
12 in subsection (b), the contracting officer shall nonetheless
13 exempt a contract, subcontract, or modification of a con-
14 tract or subcontract under the procurement from the re-
15 quirements of subsection (a) if the contracting officer ob-
16 tains, in accordance with standards and procedures set
17 forth in the Federal Acquisition Regulation, information
18 on prices at which the same or similar items have been
19 sold in the commercial market that is adequate for evalu-
20 ating the reasonableness of the price of the contract or
21 subcontract for a commercial item, or the contract or sub-
22 contract modification, as the case may be. The contracting
23 officer may obtain such information from the offeror or
24 contractor or, when such information is not available from
25 that source, from another source or sources.

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

9 “(B) The right under subparagraph (A) shall expire
10 3 years after the date of award of the contract, or 3 years
11 after the date of the modification of the contract, with
12 respect to which the information was provided.

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

24 “(B) For the purposes of this section, defective cost
25 or pricing data are cost or pricing data which, as of the

1 date of agreement on the price of the contract (or another
2 date agreed upon between the parties), were inaccurate,
3 incomplete, or noncurrent. If for purposes of the preceding
4 sentence the parties agree upon a date other than the date
5 of agreement on the price of the contract, the date agreed
6 upon by the parties shall be as close to the date of agree-
7 ment on the price of the contract as is practicable.

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

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

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

23 “(i) was the sole source of the property or
24 services procured; or

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

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

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

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

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

21 “(i) the contractor certifies to the contracting
22 officer (or to a designated representative of the con-
23 tracting officer) that, to the best of the contractor’s
24 knowledge and belief, the contractor is entitled to
25 the offset; and

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

4 “(B) A contractor shall not be allowed to offset an
5 amount otherwise authorized to be offset under subparagraph (A) if—

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

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

9 “(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract with an executive

1 agency subject to this section and the overpayment was
2 due to the submission by the contractor of defective cost
3 or pricing data, the contractor shall be liable to the United
4 States—

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

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

12 “(ii) at the current rate prescribed by the
13 Secretary of the Treasury under section 6621
14 of the Internal Revenue Code of 1986; and

15 “(B) if the submission of such defective data
16 was a knowing submission, for an additional amount
17 equal to the amount of the overpayment.

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

23 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
24 TRACTOR RECORDS.—For the purpose of evaluating the
25 accuracy, completeness, and currency of cost or pricing

1 data required to be submitted by this section, the head
2 of an agency shall have the rights provided by section
3 304B(a)(2).

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

19 “(i) DEFINITIONS.—In this section:

20 “(1) The term ‘cost or pricing data’ means all
21 facts that, as of the date of agreement on the price
22 of a contract (or the price of a contract modifica-
23 tion) or, if applicable consistent with subsection
24 (e)(1)(B), another date agreed upon between the
25 parties, a prudent buyer or seller would reasonably

1 expect to affect price negotiations significantly. Such
 2 term does not include information that is
 3 judgmental, but does include the factual information
 4 from which a judgment was derived.

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

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

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

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

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

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

18 **Subtitle C—Research and**
 19 **Development**

20 **SEC. 1301. RESEARCH PROJECTS.**

21 (a) AUTHORIZED MEANS.—Subsection (b) of section
 22 2358 of title 10, United States Code, is amended to read
 23 as follows:

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

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

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

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

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

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

19 (c) ADVANCED RESEARCH PROJECTS.—

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

23 (A) by redesignating subsections (a), (b),
24 (c), (d), (e), and (f) as subsections (b), (c), (d),
25 (e), (f), and (g), respectively; and

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

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

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

14 (A) in subsection (b)—

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

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

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

23 (C) in subsection (d)—

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

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

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

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

10 (E) in subsection (f)—

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

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

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

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

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

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

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

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

18 **Subtitle D—Procurement Protests**

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

20 **GENERAL**

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

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

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

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

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

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

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

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

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

18 (1) in subsection (b)—

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

22 (B) in paragraph (2)—

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(i) upon a written finding that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (b) GAO RECOMMENDATIONS ON PROTESTS.—

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

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

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

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

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

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

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

18 “(B) bid and proposal preparation.

19 “(2) No party (other than a small business concern
20 (within the meaning of section 3(a) of the Small Business
21 Act)) may be paid, pursuant to a recommendation made
22 under the authority of paragraph (1)—

23 “(A) costs for consultant and expert witness
24 fees that exceed the rates provided under section
25 504(b)(1)(A) of title 5 for expert witnesses; or

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

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

7 “(A) pay the costs promptly; or

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

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

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

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

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

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

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

14 “(i) private relief legislation;

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

17 “(iii) further investigation by Congress; or

18 “(iv) other action.

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

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

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

12 **SEC. 1404. REGULATIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (2) in subsection (a)—

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

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

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

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

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

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

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

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

19 (b) CLERICAL AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(i) is frivolous;

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

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

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

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

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

1 United States Code, further declare an appropriate pre-
2 vailing party to be entitled to the cost of filing and pursu-
3 ing the protest (including reasonable attorney's fees and
4 consultant and expert witness fees), and bid and proposal
5 preparation. However, no party (other than a small busi-
6 ness concern (within the meaning of section 3(a) of the
7 Small Business Act)) may be declared entitled to costs for
8 consultant and expert witness fees that exceed the rates
9 provided under section 504(b)(1)(A) of title 5, United
10 States Code, for expert witnesses or to costs for attorney's
11 fees that exceed the rates provided for attorneys under
12 section 504(b)(1)(A) of title 5, United States Code.''.
13

SEC. 1436. DISMISSAL AGREEMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SEC. 1439. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

17 **PART I—ARMED SERVICES ACQUISITIONS**

18 **SEC. 1501. DEFINITIONS.**

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

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

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

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

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

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

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

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

23 **“§ 2311. Delegation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (4) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **PART II—CIVILIAN AGENCY ACQUISITIONS**

21 **SEC. 1551. DEFINITIONS.**

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

1 nent', 'nondevelopmental item', and 'simplified acquisition
2 threshold' ”.

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

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

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

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

11 “DELEGATION

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

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

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

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

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

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

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

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

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

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

18 “DETERMINATIONS AND DECISIONS

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

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

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

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

“Sec. 310. Determinations and decisions.”.

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

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

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

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

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

7 “(ii) The District of Columbia.

8 “(iii) The Commonwealth of Puerto Rico.

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

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

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

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

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

3 “(C) In this paragraph:

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

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

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

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

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

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

3 **TITLE II—CONTRACT**

4 **ADMINISTRATION**

5 **Subtitle A—Contract Payment**

6 **PART I—ARMED SERVICES ACQUISITIONS**

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

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

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

13 **“§ 2307. Contract financing”;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(g) CERTAIN NAVY CONTRACTS.—(1) The Sec-
13 retary of the Navy shall provide that the rate for progress
14 payments on any contract awarded by the Secretary for
15 repair, maintenance, or overhaul of a naval vessel shall
16 be not less than—

17 “(A) 95 percent, in the case of firms considered
18 to be small businesses; and

19 “(B) 90 percent, in the case of all other firms.

20 “(2) The Secretary of the Navy may advance to pri-
21 vate salvage companies such funds as the Secretary con-
22 siders necessary to provide for the immediate financing
23 of salvage operations. Advances under this paragraph shall
24 be made on terms that the Secretary considers adequate
25 for the protection of the United States.

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

8 (h) RELATIONSHIP TO PROMPT PAYMENT REQUIRE-
9 MENTS.—Section 2307(f) of title 10, United States Code,
10 as amended by subsection (f), is not intended to impair
11 or modify procedures required by the provisions of chapter
12 39 of title 31, United States Code, and the regulations
13 issued pursuant to such provisions of law, that relate to
14 progress payment requests, as such procedures are in ef-
15 fect on the date of the enactment of this Act.

16 (i) CONFORMING AND CLERICAL AMENDMENTS.—

17 (1) CROSS REFERENCE.—Such section, as
18 amended by subsection (a), is further amended in
19 subsections (d) and (e) by striking out “subsection
20 (a)” and inserting in lieu thereof “subsection (b)”.

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

“2307. Contract financing.”.

1 (j) REPEAL OF SUPERSEDED PROVISIONS.—

2 (1) PROGRESS PAYMENTS UNDER CERTAIN
3 NAVY CONTRACTS.—

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

6 (B) CLERICAL AMENDMENT.—The table of
7 sections at the beginning of chapter 633 of such
8 title is amended by striking out the item relat-
9 ing to section 7312.

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

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

14 (B) CLERICAL AMENDMENT.—The table of
15 sections at the beginning of chapter 637 of such
16 title is amended by striking out the item relat-
17 ing to section 7364.

18 (3) PARTIAL PAYMENTS UNDER NAVY CON-
19 TRACTS.—

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

22 (B) CLERICAL AMENDMENT.—The table of
23 sections at the beginning of chapter 645 of such
24 title is amended by striking out the item relat-
25 ing to section 7521.

1 **SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.**

2 (a) REPEAL.—Section 2355 of title 10, United States
3 Code, is repealed.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 139 of such title is amended
6 by striking out the item relating to section 2355.

7 **PART II—CIVILIAN AGENCY ACQUISITIONS**

8 **SEC. 2051. CONTRACT FINANCING.**

9 (a) REORGANIZATION OF PRINCIPAL AUTHORITY
10 PROVISION.—Section 305 of the Federal Property and
11 Administrative Services Act of 1949 (41 U.S.C. 255) is
12 amended—

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

15 “CONTRACT FINANCING”;

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

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

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

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

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

17 (c) PERFORMANCE-BASED PAYMENTS.—Such sec-
18 tion, as amended by subsection (a), is further amended
19 by inserting after subsection (b) the following new sub-
20 section (c):

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

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

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

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

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

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

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

16 (f) REVISION OF CIVILIAN AGENCY PROVISION TO
17 ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-
18 MENTS.—

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

22 “(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1)
23 The agency head shall ensure that any payment for work
24 in progress (including materials, labor, and other items)
25 under a contract of an executive agency that provides for

1 such payments is commensurate with the work accom-
2 plished that meets standards established under the con-
3 tract. The contractor shall provide such information and
4 evidence as the agency head determines necessary to per-
5 mit the agency head to carry out the preceding sentence.

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

11 “(3) This subsection applies to a contract for an
12 amount equal to or greater than the simplified acquisition
13 threshold.

14 “(g) ACTION IN CASE OF FRAUD.—(1) In any case
15 in which the remedy coordination official of an executive
16 agency finds that there is substantial evidence that the
17 request of a contractor for advance, partial, or progress
18 payment under a contract awarded by that executive agen-
19 cy is based on fraud, the remedy coordination official shall
20 recommend that the agency head reduce or suspend fur-
21 ther payments to such contractor.

22 “(2) An agency head receiving a recommendation
23 under paragraph (1) in the case of a contractor’s request
24 for payment under a contract shall determine whether
25 there is substantial evidence that the request is based on

1 fraud. Upon making such a determination, the agency
2 head may reduce or suspend further payments to the con-
3 tractor under such contract.

4 “(3) The extent of any reduction or suspension of
5 payments by an agency head under paragraph (2) on the
6 basis of fraud shall be reasonably commensurate with the
7 anticipated loss to the United States resulting from the
8 fraud.

9 “(4) A written justification for each decision of the
10 agency head whether to reduce or suspend payments
11 under paragraph (2), and for each recommendation re-
12 ceived by the agency head in connection with such deci-
13 sion, shall be prepared and be retained in the files of the
14 executive agency.

15 “(5) Each agency head shall prescribe procedures to
16 ensure that, before the agency head decides to reduce or
17 suspend payments in the case of a contractor under para-
18 graph (2), the contractor is afforded notice of the pro-
19 posed reduction or suspension and an opportunity to sub-
20 mit matters to the head of the agency in response to such
21 proposed reduction or suspension.

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

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

3 “(B) transmit a recommendation to the agency
4 head whether the suspension or reduction should
5 continue.

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

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

18 “(9) In this subsection, the term ‘remedy coordina-
19 tion official’, with respect to an executive agency, means
20 the person or entity in that executive agency who coordi-
21 nates within that executive agency the administration of
22 criminal, civil, administrative, and contractual remedies
23 resulting from investigations of fraud or corruption related
24 to procurement activities.”.

1 (2) RELATIONSHIP TO PROMPT PAYMENT RE-
 2 QUIREMENTS.—The amendment made by paragraph
 3 (1) is not intended to impair or modify procedures
 4 required by the provisions of chapter 39 of title 31,
 5 United States Code, and the regulations issued pur-
 6 suant to such provisions of law, that relate to
 7 progress payment requests, as such procedures are
 8 in effect on the date of the enactment of this Act.

9 (g) CONFORMING AND CLERICAL AMENDMENTS.—

10 (1) REFERENCE.—Section 305 of the Federal
 11 Property and Administrative Services Act of 1949,
 12 as amended by subsection (a), is further amended in
 13 subsections (d) and (e) by striking out “subsection
 14 (a)” and inserting in lieu thereof “subsection (b)”.

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

“Sec. 305. Contract financing.”.

19 **Subtitle B—Cost Principles**

20 **PART I—ARMED SERVICES ACQUISITIONS**

21 **SEC. 2101. ALLOWABLE CONTRACT COSTS.**

22 (a) UNALLOWABILITY OF COSTS TO INFLUENCE
 23 LOCAL LEGISLATIVE BODIES.—Subsection (e)(1)(B) of
 24 section 2324 of title 10, United States Code, is amended
 25 by striking out “or a State legislature” and inserting in

1 lieu thereof “, a State legislature, or a legislative body of
2 a political subdivision of a State”.

3 (b) COMPTROLLER GENERAL EVALUATION.—Section
4 2324 of such title is amended by striking out subsection
5 (l).

6 (c) COVERED CONTRACT DEFINED.—Subsection (m)
7 of such section is amended to read as follows:

8 “(l)(1) In this section, the term ‘covered contract’
9 means a contract for an amount in excess of \$500,000
10 that is entered into by the Department of Defense, except
11 that such term does not include a fixed-price contract
12 without cost incentives.

13 “(2) Effective on October 1 of each year that is divis-
14 ible by 5, the amount set forth in paragraph (1) shall be
15 adjusted to the amount that is equal to the fiscal year
16 1994 constant dollar value of the amount set forth. An
17 amount, as so adjusted, that is not evenly divisible by
18 \$50,000 shall be rounded to the nearest multiple of
19 \$50,000. In the case of an amount that is evenly divisible
20 by \$25,000 but is not evenly divisible by \$50,000, the
21 amount shall be rounded to the next higher multiple of
22 \$50,000.”.

1 **SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMER-**
2 **GENCY PERIODS.**

3 (a) REPEAL.—Section 2382 of title 10, United States
4 Code, is repealed.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of chapter 141 of such title is amended
7 by striking out the item relating to section 2382.

8 **PART II—CIVILIAN AGENCY ACQUISITIONS**

9 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

10 (a) REVISION OF CIVILIAN AGENCY PROVISION TO
11 ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—
12 Section 306 of the Federal Property and Administrative
13 Services Act of 1949 (41 U.S.C. 256) is amended to read
14 as follows:

15 “ALLOWABLE COSTS

16 “SEC. 306. (a) INDIRECT COST THAT VIOLATES A
17 FAR COST PRINCIPLE.—The head of an executive agency
18 shall require that a covered contract provide that if the
19 contractor submits to the executive agency a proposal for
20 settlement of indirect costs incurred by the contractor for
21 any period after such costs have been accrued and if that
22 proposal includes the submission of a cost which is unal-
23 lowable because the cost violates a cost principle in the
24 Federal Acquisition Regulation or an executive agency’s
25 supplement to the Federal Acquisition Regulation, the cost
26 shall be disallowed.

1 “(b) PENALTY FOR VIOLATION OF COST PRIN-
2 CIPLE.—(1) If the agency head determines that a cost
3 submitted by a contractor in its proposal for settlement
4 is expressly unallowable under a cost principle referred to
5 in subsection (a) that defines the allowability of specific
6 selected costs, the agency head shall assess a penalty
7 against the contractor in an amount equal to—

8 “(A) the amount of the disallowed cost allo-
9 cated to covered contracts for which a proposal for
10 settlement of indirect costs has been submitted; plus

11 “(B) interest (to be computed based on regula-
12 tions issued by the agency head) to compensate the
13 United States for the use of any funds which a con-
14 tractor has been paid in excess of the amount to
15 which the contractor was entitled.

16 “(2) If the agency head determines that a proposal
17 for settlement of indirect costs submitted by a contractor
18 includes a cost determined to be unallowable in the case
19 of such contractor before the submission of such proposal,
20 the agency head shall assess a penalty against the contrac-
21 tor in an amount equal to two times the amount of the
22 disallowed cost allocated to covered contracts for which a
23 proposal for settlement of indirect costs has been submit-
24 ted.

1 “(c) WAIVER OF PENALTY.—In accordance with the
2 Federal Acquisition Regulation, the agency head may
3 waive a penalty under subsection (b) in the case of a con-
4 tractor’s proposal for settlement of indirect costs when—

5 “(1) the contractor withdraws the proposal be-
6 fore the formal initiation of an audit of the proposal
7 by the Federal Government and resubmits a revised
8 proposal;

9 “(2) the amount of unallowable costs subject to
10 the penalty is insignificant; or

11 “(3) the contractor demonstrates, to the con-
12 tracting officer’s satisfaction, that—

13 “(A) it has established appropriate policies
14 and personnel training and an internal control
15 and review system that provide assurances that
16 unallowable costs subject to penalties are pre-
17 cluded from being included in the contractor’s
18 proposal for settlement of indirect costs; and

19 “(B) the unallowable costs subject to the
20 penalty were inadvertently incorporated into the
21 proposal.

22 “(d) APPLICABILITY OF CONTRACT DISPUTES PRO-
23 CEDURE TO DISALLOWANCE OF COST AND ASSESSMENT
24 OF PENALTY.—An action of an agency head under sub-
25 section (a) or (b)—

1 “(1) shall be considered a final decision for the
2 purposes of section 6 of the Contract Disputes Act
3 of 1978 (41 U.S.C. 605); and

4 “(2) is appealable in the manner provided in
5 section 7 of such Act.

6 “(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The
7 following costs are not allowable under a covered contract:

8 “(A) Costs of entertainment, including amuse-
9 ment, diversion, and social activities, and any costs
10 directly associated with such costs (such as tickets
11 to shows or sports events, meals, lodging, rentals,
12 transportation, and gratuities).

13 “(B) Costs incurred to influence (directly or in-
14 directly) legislative action on any matter pending be-
15 fore Congress, a State legislature, or a legislative
16 body of a political subdivision of a State.

17 “(C) Costs incurred in defense of any civil or
18 criminal fraud proceeding or similar proceeding (in-
19 cluding filing of any false certification) brought by
20 the United States where the contractor is found lia-
21 ble or had pleaded nolo contendere to a charge of
22 fraud or similar proceeding (including filing of a
23 false certification).

24 “(D) Payments of fines and penalties resulting
25 from violations of, or failure to comply with, Fed-

1 eral, State, local, or foreign laws and regulations, ex-
2 cept when incurred as a result of compliance with
3 specific terms and conditions of the contract or spe-
4 cific written instructions from the contracting officer
5 authorizing in advance such payments in accordance
6 with the Federal Acquisition Regulation.

7 “(E) Costs of membership in any social, dining,
8 or country club or organization.

9 “(F) Costs of alcoholic beverages.

10 “(G) Contributions or donations, regardless of
11 the recipient.

12 “(H) Costs of advertising designed to promote
13 the contractor or its products.

14 “(I) Costs of promotional items and memora-
15 bilia, including models, gifts, and souvenirs.

16 “(J) Costs for travel by commercial aircraft
17 which exceed the amount of the standard commercial
18 fare.

19 “(K) Costs incurred in making any payment
20 (commonly known as a ‘golden parachute payment’)
21 which is—

22 “(i) in an amount in excess of the normal
23 severance pay paid by the contractor to an em-
24 ployee upon termination of employment; and

1 “(ii) is paid to the employee contingent
2 upon, and following, a change in management
3 control over, or ownership of, the contractor or
4 a substantial portion of the contractor’s assets.

5 “(L) Costs of commercial insurance that pro-
6 tects against the costs of the contractor for correc-
7 tion of the contractor’s own defects in materials or
8 workmanship.

9 “(M) Costs of severance pay paid by the con-
10 tractor to foreign nationals employed by the contrac-
11 tor under a service contract performed outside the
12 United States, to the extent that the amount of sev-
13 erance pay paid in any case exceeds the amount paid
14 in the industry involved under the customary or pre-
15 vailing practice for firms in that industry providing
16 similar services in the United States, as determined
17 in accordance with the Federal Acquisition Regula-
18 tion.

19 “(N) Costs of severance pay paid by the con-
20 tractor to a foreign national employed by the con-
21 tractor under a service contract performed in a for-
22 eign country if the termination of the employment of
23 the foreign national is the result of the closing of,
24 or the curtailment of activities at, a United States

1 facility in that country at the request of the govern-
2 ment of that country.

3 “(O) Costs incurred by a contractor in connec-
4 tion with any criminal, civil, or administrative pro-
5 ceeding commenced by the United States or a State,
6 to the extent provided in subsection (k).

7 “(2)(A) Subject to the availability of appropriations,
8 the head of an executive agency, in awarding a covered
9 contract, may waive in accordance with the Federal Acqui-
10 sition Regulation the application of the provisions of para-
11 graphs (1)(M) and (1)(N) to that contract if the agency
12 head determines that—

13 “(i) the application of such provisions to the
14 contract would adversely affect the continuation of a
15 program, project, or activity that provides significant
16 support services for employees of the executive agen-
17 cy posted outside the United States;

18 “(ii) the contractor has taken (or has estab-
19 lished plans to take) appropriate actions within the
20 contractor’s control to minimize the amount and
21 number of incidents of the payment of severance pay
22 by the contractor to employees under the contract
23 who are foreign nationals; and

24 “(iii) the payment of severance pay is necessary
25 in order to comply with a law that is generally appli-

1 cable to a significant number of businesses in the
2 country in which the foreign national receiving the
3 payment performed services under the contract or is
4 necessary to comply with a collective bargaining
5 agreement.

6 “(B) The head of the executive agency concerned
7 shall include in the solicitation for a covered contract a
8 statement indicating—

9 “(i) that a waiver has been granted under sub-
10 paragraph (A) for the contract; or

11 “(ii) whether the agency head will consider
12 granting such a waiver, and, if the agency head will
13 consider granting a waiver, the criteria to be used in
14 granting the waiver.

15 “(C) The agency head shall make the final determina-
16 tion regarding whether to grant a waiver under subpara-
17 graph (A) with respect to a covered contract before award
18 of the contract.

19 “(3) The head of each executive agency shall imple-
20 ment this section with respect to contracts of that execu-
21 tive agency in accordance with the Federal Acquisition
22 Regulation. The provisions of the Federal Acquisition ap-
23 plicable to the implementation of this section may include
24 definitions, exclusions, limitations, and qualifications.

1 “(f) REQUIRED REGULATIONS.—(1) The Federal Ac-
2 quisition Regulation referred to in section 25(c)(1) of the
3 Office of Federal Procurement Policy Act (41 U.S.C.
4 421(c)(1)) shall contain provisions on the allowability of
5 contractor costs. Such provisions shall define in detail and
6 in specific terms those costs which are unallowable, in
7 whole or in part, under covered contracts. The regulations
8 shall, at a minimum, clarify the cost principles applicable
9 to contractor costs of the following:

10 “(A) Air shows.

11 “(B) Membership in civic, community, and pro-
12 fessional organizations.

13 “(C) Recruitment.

14 “(D) Employee morale and welfare.

15 “(E) Actions to influence (directly or indirectly)
16 executive branch action on regulatory and contract
17 matters (other than costs incurred in regard to con-
18 tract proposals pursuant to solicited or unsolicited
19 bids).

20 “(F) Community relations.

21 “(G) Dining facilities.

22 “(H) Professional and consulting services, in-
23 cluding legal services.

24 “(I) Compensation.

25 “(J) Selling and marketing.

1 “(K) Travel.

2 “(L) Public relations.

3 “(M) Hotel and meal expenses.

4 “(N) Expense of corporate aircraft.

5 “(O) Company-furnished automobiles.

6 “(P) Advertising.

7 “(2) The Federal Acquisition Regulation shall require
8 that a contracting officer not resolve any questioned costs
9 until the contracting officer has obtained—

10 “(A) adequate documentation with respect to
11 such costs; and

12 “(B) the opinion of the executive agency’s con-
13 tract auditor on the allowability of such costs.

14 “(3) The Federal Acquisition Regulation shall pro-
15 vide that, to the maximum extent practicable, an executive
16 agency’s contract auditor be present at any negotiation or
17 meeting with the contractor regarding a determination of
18 the allowability of indirect costs of the contractor.

19 “(4) The Federal Acquisition Regulation shall require
20 that all categories of costs designated in the report of an
21 executive agency’s contract auditor as questioned with re-
22 spect to a proposal for settlement be resolved in such a
23 manner that the amount of the individual questioned costs
24 that are paid will be reflected in the settlement.

1 “(g) APPLICABILITY OF REQUIRED REGULATIONS TO
2 SUBCONTRACTORS.—The regulations prescribed to carry
3 out subsections (e) and (f)(1) shall require, to the maxi-
4 mum extent practicable, that such regulations apply to all
5 subcontractors of a covered contract.

6 “(h) CONTRACTOR CERTIFICATION REQUIRED.—(1)
7 A proposal for settlement of indirect costs applicable to
8 a covered contract shall include a certification by an offi-
9 cial of the contractor that, to the best of the certifying
10 official’s knowledge and belief, all indirect costs included
11 in the proposal are allowable. Any such certification shall
12 be in a form prescribed by the agency head concerned.

13 “(2) The agency head concerned may, in an excep-
14 tional case, waive the requirement for certification under
15 paragraph (1) in the case of any contract if the agency
16 head—

17 “(A) determines in such case that it would be
18 in the interest of the United States to waive such
19 certification; and

20 “(B) states in writing the reasons for that de-
21 termination and makes such determination available
22 to the public.

23 “(i) PENALTIES FOR SUBMISSION OF COST KNOWN
24 AS NOT ALLOWABLE.—The submission to an executive
25 agency of a proposal for settlement of costs for any period

1 after such costs have been accrued that includes a cost
2 that is expressly specified by statute or regulation as being
3 unallowable, with the knowledge that such cost is unallow-
4 able, shall be subject to the provisions of section 287 of
5 title 18, United States Code, and section 3729 of title 31,
6 United States Code.

7 “(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—
8 In a proceeding before a board of contract appeals, the
9 United States Court of Federal Claims, or any other Fed-
10 eral court in which the reasonableness of indirect costs for
11 which a contractor seeks reimbursement from the United
12 States is in issue, the burden of proof shall be upon the
13 contractor to establish that those costs are reasonable.

14 “(k) PROCEEDING COSTS NOT ALLOWABLE.—(1)
15 Except as otherwise provided in this subsection, costs in-
16 curred by a contractor in connection with any criminal,
17 civil, or administrative proceeding commenced by the
18 United States or a State are not allowable as reimbursable
19 costs under a covered contract if the proceeding (A) re-
20 lates to a violation of, or failure to comply with, a Federal
21 or State statute or regulation, and (B) results in a disposi-
22 tion described in paragraph (2).

23 “(2) A disposition referred to in paragraph (1)(B) is
24 any of the following:

1 “(A) In the case of a criminal proceeding, a
2 conviction (including a conviction pursuant to a plea
3 of nolo contendere) by reason of the violation or fail-
4 ure referred to in paragraph (1).

5 “(B) In the case of a civil or administrative
6 proceeding involving an allegation of fraud or similar
7 misconduct, a determination of contractor liability
8 on the basis of the violation or failure referred to in
9 paragraph (1).

10 “(C) In the case of any civil or administrative
11 proceeding, the imposition of a monetary penalty by
12 reason of the violation or failure referred to in para-
13 graph (1).

14 “(D) A final decision—

15 “(i) to debar or suspend the contractor,

16 “(ii) to rescind or void the contract, or

17 “(iii) to terminate the contract for default,

18 by reason of the violation or failure referred to in
19 paragraph (1).

20 “(E) A disposition of the proceeding by consent
21 or compromise if such action could have resulted in
22 a disposition described in subparagraph (A), (B),
23 (C), or (D).

24 “(3) In the case of a proceeding referred to in para-
25 graph (1) that is commenced by the United States and

1 is resolved by consent or compromise pursuant to an
2 agreement entered into by a contractor and the United
3 States, the costs incurred by the contractor in connection
4 with such proceeding that are otherwise not allowable as
5 reimbursable costs under such paragraph may be allowed
6 to the extent specifically provided in such agreement.

7 “(4) In the case of a proceeding referred to in para-
8 graph (1) that is commenced by a State, the agency head
9 that awarded the covered contract involved in the proceed-
10 ing may allow the costs incurred by the contractor in con-
11 nection with such proceeding as reimbursable costs if the
12 agency head determines, under regulations prescribed by
13 such agency head, that the costs were incurred as a result
14 of (A) a specific term or condition of the contract, or (B)
15 specific written instructions of the agency.

16 “(5)(A) Except as provided in subparagraph (C),
17 costs incurred by a contractor in connection with a crimi-
18 nal, civil, or administrative proceeding commenced by the
19 United States or a State in connection with a covered con-
20 tract may be allowed as reimbursable costs under the con-
21 tract if such costs are not disallowable under paragraph
22 (1), but only to the extent provided in subparagraph (B).

23 “(B)(i) The amount of the costs allowable under sub-
24 paragraph (A) in any case may not exceed the amount
25 equal to 80 percent of the amount of the costs incurred,

1 to the extent that such costs are determined to be other-
2 wise allowable and allocable under the Federal Acquisition
3 Regulations.

4 “(ii) Regulations issued for the purpose of clause (i)
5 shall provide for appropriate consideration of the complex-
6 ity of procurement litigation, generally accepted principles
7 governing the award of legal fees in civil actions involving
8 the United States as a party, and such other factors as
9 may be appropriate.

10 “(C) In the case of a proceeding referred to in sub-
11 paragraph (A), contractor costs otherwise allowable as re-
12 imburseable costs under this paragraph are not allowable
13 if (i) such proceeding involves the same contractor mis-
14 conduct alleged as the basis of another criminal, civil, or
15 administrative proceeding, and (ii) the costs of such other
16 proceeding are not allowable under paragraph (1).

17 “(6) In this subsection:

18 “(A) The term ‘proceeding’ includes an inves-
19 tigation.

20 “(B) The term ‘costs’, with respect to a pro-
21 ceeding—

22 “(i) means all costs incurred by a contrac-
23 tor, whether before or after the commencement
24 of any such proceeding; and

25 “(ii) includes—

1 “(I) administrative and clerical ex-
2 penses;

3 “(II) the cost of legal services, includ-
4 ing legal services performed by an em-
5 ployee of the contractor;

6 “(III) the cost of the services of ac-
7 countants and consultants retained by the
8 contractor; and

9 “(IV) the pay of directors, officers,
10 and employees of the contractor for time
11 devoted by such directors, officers, and em-
12 ployees to such proceeding.

13 “(C) The term ‘penalty’ does not include res-
14 titution, reimbursement, or compensatory damages.

15 “(I) COVERED CONTRACT DEFINED.—(1) In this sec-
16 tion, the term ‘covered contract’ means a contract for an
17 amount in excess of \$500,000 that is entered into by an
18 executive agency, except that such term does not include
19 a fixed-price contract without cost incentives.

20 “(2) Effective on October 1 of each year that is divis-
21 ible by 5, the amount set forth in paragraph (1) shall be
22 adjusted to the amount that is equal to the fiscal year
23 1994 constant dollar value of the amount set forth. An
24 amount, as so adjusted, that is not evenly divisible by
25 \$50,000 shall be rounded to the nearest multiple of

1 \$50,000. In the case of an amount that is evenly divisible
 2 by \$25,000 but is not evenly divisible by \$50,000, the
 3 amount shall be rounded to the next higher multiple of
 4 \$50,000.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
 6 in the first section of such Act is amended by striking out
 7 the item relating to section 306 and inserting in lieu there-
 8 of the following:

“Sec. 306. Allowable costs.”.

9 **PART III—ACQUISITIONS GENERALLY**

10 **SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-** 11 **TORS.**

12 Section 24 of the Office of Federal Procurement Pol-
 13 icy Act (41 U.S.C. 420) is repealed.

14 **SEC. 2192. UNALLOWABILITY OF ENTERTAINMENT COSTS** 15 **UNDER COVERED CONTRACTS.**

16 Not later than 90 days after the date of the enact-
 17 ment of this Act, the Federal Acquisition Regulatory
 18 Council shall amend the cost principle in the Federal Ac-
 19 quisition Regulation that is set out in section 31.205–14
 20 of title 48, Code of Federal Regulations, relating to
 21 unallowability of entertainment costs—

22 (1) by inserting in the cost principle a state-
 23 ment that costs made specifically unallowable under
 24 that cost principle are not allowable under any other
 25 cost principle; and

1 (2) by striking out “(but see 31.205–1 and
2 31.205–13)”.

3 **Subtitle C—Audit and Access to**
4 **Records**

5 **PART I—ARMED SERVICES ACQUISITIONS**

6 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY**
7 **TO EXAMINE RECORDS OF CONTRACTORS.**

8 (a) AUTHORITY.—

9 (1) IN GENERAL.—Section 2313 of title 10,
10 United States Code, is amended to read as follows:

11 **“§ 2313. Examination of records of contractor**

12 “(a) AGENCY AUTHORITY.—The head of an agency,
13 acting through an authorized representative—

14 “(1) is entitled to inspect the plant and audit
15 the records of—

16 “(A) a contractor performing a cost-reim-
17 bursement, incentive, time-and-materials, labor-
18 hour, or price-redeterminable contract, or any
19 combination of such contracts, made by that
20 agency under this chapter; and

21 “(B) a subcontractor performing any cost-
22 reimbursement, incentive, time-and-materials,
23 labor-hour, or price-redeterminable subcontract
24 under a contract referred to in subparagraph

1 (A) or under any combination of such contracts;
2 and

3 “(2) shall, for the purpose of evaluating the ac-
4 curacy, completeness, and currency of cost or pricing
5 data required to be submitted pursuant to section
6 2306a of this title with respect to a contract or sub-
7 contract, have the right to examine all records of the
8 contractor or subcontractor related to—

9 “(A) the proposal for the contract or sub-
10 contract;

11 “(B) the discussions conducted on the pro-
12 posal;

13 “(C) pricing of the contract or subcontract;
14 or

15 “(D) performance of the contract or sub-
16 contract.

17 “(b) LIMITATION ON PREAWARD AUDITS RELATING
18 TO INDIRECT COSTS.—The head of an agency may not
19 perform a preaward audit to evaluate proposed indirect
20 costs under any contract, subcontract, or modification to
21 be entered into in accordance with this chapter in any case
22 in which the contracting officer determines that the objec-
23 tives of the audit can reasonably be met by accepting the
24 results of an audit conducted by any other department or

1 agency of the Federal Government within one year preced-
2 ing the date of the contracting officer's determination.

3 “(c) SUBPOENA POWER.—(1) The Director of the
4 Defense Contract Audit Agency (or any successor agency)
5 may require by subpoena the production of records of a
6 contractor, access to which is provided to the Secretary
7 of Defense or Secretary of a military department by sub-
8 section (a).

9 “(2) Any such subpoena, in the case of contumacy
10 or refusal to obey, shall be enforceable by order of an ap-
11 propriate United States district court.

12 “(3) The authority provided by paragraph (1) may
13 not be redelegated.

14 “(4) The Director (or any successor official) shall
15 submit an annual report to the Secretary of Defense on
16 the exercise of such authority during the preceding year
17 and the reasons why such authority was exercised in any
18 instance. The Secretary shall forward a copy of each such
19 report to the Committees on Armed Services of the Senate
20 and House of Representatives.

21 “(d) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
22 cept as provided in paragraph (2), each contract awarded
23 after using procedures other than sealed bid procedures
24 shall provide that the Comptroller General and his rep-
25 resentatives are entitled to examine any records of the

1 contractor, or any of its subcontractors, that directly per-
2 tain to, and involve transactions relating to, the contract
3 or subcontract.

4 “(2) Paragraph (1) does not apply to a contract or
5 subcontract with a foreign contractor or foreign sub-
6 contractor if the head of the agency concerned determines,
7 with the concurrence of the Comptroller General or his
8 designee, that the application of that paragraph to the
9 contract or subcontract would not be in the public interest.
10 However, the concurrence of the Comptroller General or
11 his designee is not required—

12 “(A) where the contractor or subcontractor is a
13 foreign government or agency thereof or is precluded
14 by the laws of the country involved from making its
15 records available for examination; and

16 “(B) where the head of the agency determines,
17 after taking into account the price and availability of
18 the property and services from United States
19 sources, that the public interest would be best served
20 by not applying paragraph (1).

21 “(3) Paragraph (1) may not be construed to require
22 a contractor or subcontractor to create or maintain any
23 record that the contractor or subcontractor does not main-
24 tain in the ordinary course of business or pursuant to an-
25 other provision of law.

1 “(e) LIMITATION.—The right of the head of an agen-
2 cy under subsection (a), and the right of the Comptroller
3 General under subsection (d), with respect to a contract
4 or subcontract shall expire three years after final payment
5 under such contract or subcontract.

6 “(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—
7 This section is inapplicable with respect to the following
8 contracts:

9 “(1) Contracts for utility services at rates not
10 exceeding those established to apply uniformly to the
11 public, plus any applicable reasonable connection
12 charge.

13 “(g) RECORDS DEFINED.—In this section, the term
14 ‘records’ includes books, documents, accounting proce-
15 dures and practices, and other data, regardless of type and
16 regardless of whether such items are in written form, in
17 the form of computer data, or in any other form.”.

18 (2) CLERICAL AMENDMENT.—The item relating
19 to such section in the table of sections at the begin-
20 ning of chapter 137 of title 10, United States Code,
21 is amended to read as follows:

“2313. Examination of records of contractor.”.

22 (b) REPEAL OF SUPERSEDED PROVISION.—

23 (1) REPEAL.—Section 2406 of title 10, United
24 States Code, is repealed.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 141 of such title
 3 is amended by striking out the item relating to sec-
 4 tion 2406.

5 **PART II—CIVILIAN AGENCY ACQUISITIONS**

6 **SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CON-**
 7 **TRACTORS.**

8 (a) AUTHORITY.—

9 (1) IN GENERAL.—Title III of the Federal
 10 Property and Administrative Services Act of 1949
 11 (41 U.S.C. 251 et seq.), as amended by section
 12 1251(a), is further amended by inserting after sec-
 13 tion 304A the following new section:

14 “EXAMINATION OF RECORDS OF CONTRACTOR

15 “SEC. 304B. (a) AGENCY AUTHORITY.—The head of
 16 an executive agency, acting through an authorized rep-
 17 resentative—

18 “(1) is entitled to inspect the plant and audit
 19 the records of—

20 “(A) a contractor performing a cost-reim-
 21 bursement, incentive, time-and-materials, labor-
 22 hour, or price-redeterminable contract, or any
 23 combination of such contracts, made by that ex-
 24 ecutive agency under this title; and

25 “(B) a subcontractor performing any cost-
 26 reimbursement, incentive, time-and-materials,

1 labor-hour, or price-redeterminable subcontract
2 under a contract referred to in subparagraph
3 (A) or under any combination of such contracts;
4 and

5 “(2) shall, for the purpose of evaluating the ac-
6 curacy, completeness, and currency of cost or pricing
7 data required to be submitted pursuant to section
8 304A with respect to a contract or subcontract, have
9 the right to examine all records of the contractor or
10 subcontractor related to—

11 “(A) the proposal for the contract or sub-
12 contract;

13 “(B) the discussions conducted on the pro-
14 posal;

15 “(C) pricing of the contract or subcontract;
16 or

17 “(D) performance of the contract or sub-
18 contract.

19 “(b) LIMITATION ON PREAWARD AUDITS RELATING
20 TO INDIRECT COSTS.—The agency head may not perform
21 a preaward audit to evaluate proposed indirect costs under
22 any contract, subcontract, or modification to be entered
23 into in accordance with this title in any case in which the
24 contracting officer determines that the objectives of the
25 audit can reasonably be met by accepting the results of

1 an audit conducted by any other department or agency
2 of the Federal Government within one year preceding the
3 date of the contracting officer's determination.

4 “(c) SUBPOENA POWER.—(1) The agency head may
5 require by subpoena the production of records of a con-
6 tractor, access to which is provided by subsection (a).

7 “(2) Any such subpoena, in the case of contumacy
8 or refusal to obey, shall be enforceable by order of an ap-
9 propriate United States district court.

10 “(3) The authority provided by paragraph (1) may
11 not be delegated.

12 “(4) In the year following a year in which the head
13 of an executive agency exercises the authority provided in
14 paragraph (1), the agency head shall submit to the Com-
15 mittee on Governmental Affairs of the Senate and the
16 Committee on Government Operations of the House of
17 Representatives a report on the exercise of such authority
18 during such preceding year and the reasons why such au-
19 thority was exercised in any instance.

20 “(d) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
21 cept as provided in paragraph (2), each contract awarded
22 after using procedures other than sealed bid procedures
23 shall provide that the Comptroller General and his rep-
24 resentatives are entitled to examine any records of the
25 contractor, or any of its subcontractors, that directly per-

tain to, and involve transactions relating to, the contract or subcontract.

“(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the agency head concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

“(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

“(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

“(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

1 “(e) LIMITATION.—The right of an agency head
2 under subsection (a), and the right of the Comptroller
3 General under subsection (d), with respect to a contract
4 or subcontract shall expire three years after final payment
5 under such contract or subcontract.

6 “(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—
7 This section is inapplicable with respect to the following
8 contracts:

9 “(1) CONTRACTS.—For utility services at rates
10 not exceeding those established to apply uniformly to
11 the public, plus any applicable reasonable connection
12 charge.

13 “(g) RECORDS DEFINED.—In this section, the term
14 ‘records’ includes books, documents, accounting proce-
15 dures and practices, and other data, regardless of type and
16 regardless of whether such items are in written form, in
17 the form of computer data, or in any other form.”.

18 (2) CLERICAL AMENDMENT.—The table of con-
19 tents in the first section of such Act, as amended by
20 section 1251(b), is further amended by inserting
21 after the item relating to section 304A the following:

“Sec. 304B. Examination of records of contractor.”.

22 (b) REPEAL OF SUPERSEDED PROVISION.—Section
23 304 of the Federal Property and Administrative Services
24 Act of 1949 (41 U.S.C. 254) is amended by striking out
25 subsection (c).

Subtitle D—Cost Accounting Standards

SEC. 2301. EXCEPTIONS TO COVERAGE.

Section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by inserting “(A)” after “(2)”;

(2) by striking out “, other than contracts or subcontracts” and all that follows and inserting in lieu thereof a period; and

(3) by inserting at the end the following:

“(B) Subparagraph (A) does not apply to the following contracts or subcontracts:

“(i) Contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

“(ii) Contracts or subcontracts where the price negotiated is based on prices set by law or regulation.

“(iii) Any other firm fixed-price contract or subcontract for commercial items which is excepted from the requirement to provide cost or pricing data pursuant to subsection (b) or (d) of section 2306a of title 10, United States Code, or subsection (b) or

1 (d) of section 304A of the Federal Property and Ad-
 2 ministrative Services Act of 1949.

3 “(C) In this paragraph, the term ‘subcontract’ in-
 4 cludes a transfer of commercial items between divisions,
 5 subsidiaries, or affiliates of a contractor.”.

6 **SEC. 2302. REPEAL OF OBSOLETE DEADLINE REGARDING**
 7 **PROCEDURAL REGULATIONS FOR THE COST**
 8 **ACCOUNTING STANDARDS BOARD.**

9 Section 26(f)(3) of the Office of Federal Procurement
 10 Policy Act (41 U.S.C. 422(f)(3)) is amended in the first
 11 sentence by striking out “Not later than 180 days after
 12 the date of the enactment of this section, the Adminis-
 13 trator” and inserting in lieu thereof “The Administrator”.

14 **Subtitle E—Administration of Con-**
 15 **tract Provisions Relating to**
 16 **Price, Delivery, and Product**
 17 **Quality**

18 **PART I—ARMED SERVICES ACQUISITIONS**

19 **SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND**
 20 **SHIP SPARE PARTS; QUALITY CONTROL.**

21 (a) REPEAL.—Section 2383 of title 10, United States
 22 Code, is repealed.

23 (b) CLERICAL AMENDMENT.—The table of sections
 24 at the beginning of chapter 141 of such title is amended
 25 by striking out the item relating to section 2383.

1 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**
2 **ON SYSTEMS.**

3 Section 2403(h) of title 10, United States Code, is
4 amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

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

9 “(2) The regulations shall include the following:

10 “(A) Guidelines for negotiating contractor guar-
11 antees that are reasonable and cost effective, as de-
12 termined on the basis of the likelihood of defects and
13 the estimated cost of correcting such defects.

14 “(B) Procedures for administering contractor
15 guarantees.

16 “(C) Guidelines for determining the cases in
17 which it may be appropriate to waive the require-
18 ments of this section.”.

19 **PART II—ACQUISITIONS GENERALLY**

20 **SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EX-**
21 **PANSION OF AUTHORITY TO PROHIBIT**
22 **SETOFFS AGAINST ASSIGNEES; REORGANIZA-**
23 **TION OF SECTION; REVISION OF OBSOLETE**
24 **PROVISIONS.**

25 Section 3737 of the Revised Statutes (41 U.S.C. 15)
26 is amended to read as follows:

1 “SEC. 3737. (a) No contract or order, or any interest
2 therein, shall be transferred by the party to whom such
3 contract or order is given to any other party, and any such
4 transfer shall cause the annulment of the contract or order
5 transferred, so far as the United States is concerned. All
6 rights of action, however, for any breach of such contract
7 by the contracting parties, are reserved to the United
8 States.

9 “(b) The provisions of subsection (a) shall not apply
10 in any case in which the moneys due or to become due
11 from the United States or from any agency or department
12 thereof, under a contract providing for payments aggre-
13 gating \$1,000 or more, are assigned to a bank, trust com-
14 pany, or other financing institution, including any Federal
15 lending agency, provided:

16 “(1) That, in the case of any contract entered
17 into after October 9, 1940, no claim shall be as-
18 signed if it arises under a contract which forbids
19 such assignment.

20 “(2) That, unless otherwise expressly permitted
21 by such contract, any such assignment shall cover all
22 amounts payable under such contract and not al-
23 ready paid, shall not be made to more than one
24 party, and shall not be subject to further assign-
25 ment, except that any such assignment may be made

1 to one party as agent or trustee for two or more
2 parties participating in such financing.

3 “(3) That, in the event of any such assignment,
4 the assignee thereof shall file written notice of the
5 assignment together with a true copy of the instru-
6 ment of the assignment with—

7 “(A) the contracting officer or the head of
8 his department or agency;

9 “(B) the surety or sureties upon the bond
10 or bonds, if any, in connection with such con-
11 tract; and

12 “(C) the disbursing officer, if any, des-
13 ignated in such contract to make payment.

14 “(c) Notwithstanding any law to the contrary govern-
15 ing the validity of assignments, any assignment pursuant
16 to this section shall constitute a valid assignment for all
17 purposes.

18 “(d) In any case in which moneys due or to become
19 due under any contract are or have been assigned pursu-
20 ant to this section, no liability of any nature of the as-
21 signor to the United States or any department or agency
22 thereof, whether arising from or independently of such
23 contract, shall create or impose any liability on the part
24 of the assignee to make restitution, refund, or repayment

1 to the United States of any amount heretofore since July
2 1, 1950, or hereafter received under the assignment.

3 “(e) Any contract of the Department of Defense, the
4 General Services Administration, the Department of En-
5 ergy, or any other department or agency of the United
6 States designated by the President, except any such con-
7 tract under which full payment has been made, may, upon
8 a determination of need by the President, provide or be
9 amended without consideration to provide that payments
10 to be made to the assignee of any moneys due or to become
11 due under such contract shall not be subject to reduction
12 or setoff. Each such determination of need shall be pub-
13 lished in the Federal Register.

14 “(f) If a provision described in subsection (e) or a
15 provision to the same general effect has been at any time
16 heretofore or is hereafter included or inserted in any such
17 contract, payments to be made thereafter to an assignee
18 of any moneys due or to become due under such contract
19 shall not be subject to reduction or setoff for any liability
20 of any nature of the assignor to the United States or any
21 department or agency thereof which arises independently
22 of such contract, or hereafter for any liability of the as-
23 signor on account of—

1 “(1) renegotiation under any renegotiation stat-
 2 ute or under any statutory renegotiation article in
 3 the contract;

4 “(2) fines;

5 “(3) penalties (which term does not include
 6 amounts which may be collected or withheld from
 7 the assignor in accordance with or for failure to
 8 comply with the terms of the contract); or

9 “(4) taxes, social security contributions, or the
 10 withholding or non withholding of taxes or social se-
 11 curity contributions, whether arising from or inde-
 12 pendently of such contract.

13 “(g) Except as herein otherwise provided, nothing in
 14 this section shall be deemed to affect or impair rights of
 15 obligations heretofore accrued.”.

16 **SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF**
 17 **CONTRACTS WITH GAO.**

18 Section 3743 of the Revised Statutes (41 U.S.C. 20)
 19 is repealed.

20 **Subtitle F—Claims and Disputes**

21 **PART I—ARMED SERVICES ACQUISITIONS**

22 **SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.**

23 (a) DoD CERTIFICATION REQUIREMENT IN CON-
 24 Flict WITH GOVERNMENTWIDE REQUIREMENT.—

1 (1) INAPPLICABILITY OF REQUIREMENT TO
2 CONTRACT CLAIMS.—Section 2410 of title 10, Unit-
3 ed States Code, is amended to read as follows:

4 **“§ 2410. Requests for equitable adjustment or other**
5 **relief: certification**

6 “(a) CERTIFICATION REQUIREMENT.—A request for
7 equitable adjustment to contract terms or request for re-
8 lief under Public Law 85–804 (50 U.S.C. 1431 et seq.)
9 that exceeds the simplified acquisition threshold may not
10 be paid unless a person authorized to certify the request
11 on behalf of the contractor certifies, at the time the re-
12 quest is submitted, that—

13 “(1) the request is made in good faith, and

14 “(2) the supporting data are accurate and com-
15 plete to the best of that person’s knowledge and be-
16 lief.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 141 of such title
19 is amended by striking out the item relating to sec-
20 tion 2410 and inserting in lieu thereof the following:

“2410. Requests for equitable adjustment or other relief: certification.”.

21 (b) RESTRICTION ON LEGISLATIVE PAYMENT OF
22 CLAIMS.—Section 2410 of title 10, United States Code,
23 as amended by subsection (a), is further amended by add-
24 ing at the end the following new subsection:

1 “(b) RESTRICTION ON LEGISLATIVE PAYMENT OF
 2 CLAIMS.—In the case of a contract of an agency named
 3 in section 2303(a) of this title, no provision of a law en-
 4 acted after September 30, 1994, that directs the payment
 5 of a particular claim under such contract, a particular re-
 6 quest for equitable adjustment to any term of such con-
 7 tract, or a particular request for relief under Public Law
 8 85–804 (50 U.S.C. 1431 et seq.) regarding such contract
 9 may be implemented unless such provision of law—

10 “(1) specifically refers to this subsection; and

11 “(2) specifically states that this subsection does
 12 not apply with respect to the payment directed by
 13 that provision of law.”.

14 (c) DEFINITION.—Section 2410, as amended by sub-
 15 sections (a) and (b), is further amended by adding at the
 16 end the following:

17 “(c) DEFINITION.—In this section, the term ‘sim-
 18 plified acquisition threshold’ has the meaning given that
 19 term in section 2302(4) of this title.”.

20 (d) REPEAL OF RELATED PROVISIONS.—

21 (1) CERTIFICATION REGULATIONS FOR CON-
 22 TRACT CLAIMS EXCEEDING \$100,000.—

23 (A) REPEAL.—Section 2410e of title 10,
 24 United States Code, is repealed.

1 (B) CLERICAL AMENDMENT.—The table of
2 sections at the beginning of chapter 141 of such
3 title is amended by striking out the item relat-
4 ing to section 2410e.

5 (2) CONFORMING REPEAL.—Section 813(b) of
6 the National Defense Authorization Act for Fiscal
7 Year 1993 (Public Law 102–484, 106 Stat. 2453),
8 is repealed.

9 **SEC. 2502. SHIPBUILDING CLAIMS.**

10 (a) LIMITATION ON PERIOD FOR SUBMISSION.—

11 (1) INCREASED PERIOD.—Subsection (a) of sec-
12 tion 2405 of title 10, United States Code, is amend-
13 ed—

14 (A) by striking out “after December 7,
15 1983,” and inserting in lieu thereof “on or
16 after the date of the enactment of the Federal
17 Acquisition Streamlining Act of 1994”; and

18 (B) by striking out “18 months” and in-
19 serting in lieu thereof “6 years”.

20 (2) SAVINGS PROVISION.—Notwithstanding the
21 6-year period provided in subsection (a) of section
22 2405 of title 10, United States Code, as amended by
23 paragraph (1), the period applicable under such sub-
24 section in the case of a shipbuilding contract entered
25 into after December 7, 1983, and before the date of

1 the enactment of the Federal Acquisition Streamlin-
 2 ing Act of 1994 shall continue to be 18 months.

3 (b) RESUBMISSION WITH CORRECTED CERTIFI-
 4 CATION.—Subsection (c) of such section is repealed.

5 **PART II—ACQUISITIONS GENERALLY**

6 **SEC. 2551. CLAIMS JURISDICTION OF UNITED STATES DIS-**
 7 **TRICT COURTS AND THE UNITED STATES**
 8 **COURT OF FEDERAL CLAIMS.**

9 (a) CONCURRENT JURISDICTION OF UNITED STATES
 10 DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.—
 11 Subsection (a) of section 1346 of title 28, United States
 12 Code, is amended to read as follows:

13 “(a)(1) The district courts shall have original juris-
 14 diction, concurrent with the United States Court of Fed-
 15 eral Claims, of any civil action against the United States
 16 for the recovery of any internal-revenue tax alleged to have
 17 been erroneously or illegally assessed or collected, or any
 18 penalty claimed to have been collected without authority
 19 or any sum alleged to have been excessive or in any man-
 20 ner wrongfully collected under the internal-revenue laws.

21 “(2)(A) Except as provided in subparagraph (B), the
 22 district courts shall have original jurisdiction, concurrent
 23 with the United States Court of Federal Claims, of any
 24 other civil action or claim against the United States, not
 25 exceeding \$10,000 in amount, founded either upon the

1 Constitution, or any Act of Congress, or any regulation
2 of an executive department, or upon any express or im-
3 plied contract with the United States, or for liquidated or
4 unliquidated damages in cases not sounding in tort.

5 “(B) The district courts shall not have jurisdiction
6 over any civil action or claim against the United States
7 or any Federal entity which relates in any manner to a
8 contract to which the Contract Disputes Act of 1978 (41
9 U.S.C. 601 et seq.) applies, including a claim that seeks
10 to establish the existence or nonexistence of such a con-
11 tract, seeks to establish that such a contract is void, or
12 seeks to determine and construe the terms of such a con-
13 tract. The district courts do not have jurisdiction over any
14 civil action or claim described in the preceding sentence
15 pursuant to section 1331, 1334, or 1346(a)(2)(B) of this
16 title, any provision of law giving a Federal entity the right
17 to sue or be sued in its own name, or any other provision
18 of law.”.

19 (b) JURISDICTION OF THE UNITED STATES COURT
20 OF FEDERAL CLAIMS UNDER THE TUCKER ACT.—Sec-
21 tion 1491 of title 28, United States Code, as amended by
22 section 1422, is further amended by inserting after sub-
23 section (c) the following:

24 “(d)(1) The United States Court of Federal Claims
25 shall have jurisdiction over any civil action or claim

1 against the United States which relates in any manner to
2 a contract to which the Contract Disputes Act of 1978
3 (41 U.S.C. 601 et seq.) applies, including a civil action
4 or claim that seeks to establish the existence or
5 nonexistence of such a contract, seeks to establish that
6 such contract is void, or seeks to determine and construe
7 the terms of any such contract.

8 “(2) The jurisdiction of the United States Court of
9 Federal Claims is, pursuant to section 1346(a)(2)(B) of
10 this title, exclusive as to the district courts of the United
11 States.”.

12 **SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.**

13 (a) PERIOD FOR FILING CLAIMS.—

14 (1) SIX-YEAR LIMITATION.—Section 6 of the
15 Contract Disputes Act of 1978 (41 U.S.C. 605) is
16 amended in subsection (a) by inserting after the sec-
17 ond sentence the following: “Each claim by a con-
18 tractor against the government relating to a contract
19 and each claim by the government against a contrac-
20 tor relating to a contract shall be submitted within
21 6 years after the occurrence of the event or events
22 giving rise to the claim. The preceding sentence does
23 not apply to a claim by the government against a
24 contractor that is based on a claim by the contractor
25 involving fraud.”.

1 (2) LIMITATION ON APPLICABILITY TO EXIST-
2 ING CONTRACTS.—Notwithstanding the third sen-
3 tence of section 6(a) of the Contract Disputes Act
4 of 1978, as added by paragraph (1), if a contract in
5 existence on the date of the enactment of this Act
6 requires that a claim referred to in that sentence be
7 submitted earlier than 6 years after the occurrence
8 of the event or events giving rise to the claim, then
9 the claim shall be submitted within the period re-
10 quired by the contract. The preceding sentence does
11 not apply to a claim by the Federal Government
12 against a contractor that is based on a claim by the
13 contractor involving fraud.

14 (b) INCREASED THRESHOLD FOR CERTIFICATION,
15 DECISION, AND NOTIFICATION REQUIREMENTS.—Sub-
16 section (c) of such section is amended by striking out
17 “\$50,000” each place it appears and inserting in lieu
18 thereof “\$100,000”.

19 (c) INCREASED MAXIMUM FOR APPLICABILITY OF
20 ACCELERATED PROCEDURES.—Section 8(f) of the Con-
21 tract Disputes Act of 1978 (41 U.S.C. 607(f)) is amended
22 by striking out “\$50,000” in the first sentence and insert-
23 ing in lieu thereof “\$150,000”.

24 (d) INCREASED MAXIMUM FOR APPLICABILITY OF
25 SMALL CLAIMS PROCEDURE.—Section 9(a) of the Con-

1 tract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended
2 by striking out “\$10,000” in the first sentence and insert-
3 ing in lieu thereof “\$50,000”.

4 (e) REDUCED PERIOD FOR FILING ACTION IN COURT
5 OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41
6 U.S.C. 609(a)(3)) is amended by striking out “twelve
7 months” and inserting in lieu thereof “90 days”.

8 **SEC. 2553. EXTENSION OF ALTERNATIVE DISPUTE RESOLU-**
9 **TION AUTHORITY.**

10 (a) EXTENSION OF AUTHORITY.—Section 6(e) of the
11 Contracts Disputes Act of 1978 (41 U.S.C. 605(e)) is
12 amended by striking out “October 1, 1995” and inserting
13 in lieu thereof “October 1, 1999”.

14 (b) AVAILABILITY OF PROCEDURES TO SMALL BUSI-
15 NESS GOVERNMENT CONTRACTORS.—Section 6(e) of such
16 Act is amended by inserting after the first sentence the
17 following: “In any case in which the contracting officer
18 rejects a contractor’s request for alternative dispute reso-
19 lution proceedings, the contracting officer shall provide the
20 contractor with a written explanation, citing one or more
21 of the conditions in section 572(b) of title V, United States
22 Code, or such other specific reasons that alternative dis-
23 pute resolution procedures are inappropriate for the reso-
24 lution of the dispute. In any case in which a contractor
25 rejects a request of an agency for alternative dispute reso-

1 lution proceedings, the contractor shall inform the agency
2 in writing of the contractor's specific reasons for rejecting
3 the request.''.
4

5 **SEC. 2554. EXPEDITED RESOLUTION OF CONTRACT ADMIN-**
6 **ISTRATION COMPLAINTS.**

7 (a) REGULATIONS REQUIRED.—The Federal Acquisi-
8 tion Regulation shall include provisions that require a con-
9 tracting officer—

10 (1) to make every reasonable effort to respond
11 in writing within 30 days to any written request
12 made to a contracting officer with respect to a mat-
13 ter relating to the administration of a contract that
14 is received from a small business concern; and

15 (2) in the event that the contracting officer is
16 unable to reply within the 30-day period, to transmit
17 to the contractor within such period a written notifi-
18 cation of a specific date by which the contracting of-
19 ficer expects to respond.

20 The provisions shall not apply to a request for a contract-
21 ing officer's decision under the Contract Disputes Act of
22 1978 (41 U.S.C. 601 et seq.).

23 (b) RULE OF CONSTRUCTION.—Nothing in this pro-
24 vision shall be considered as creating any rights under the
Contract Disputes Act (41 U.S.C. 601 et seq.).

1 (c) DEFINITION.—In this section, the term “small
2 business concern” means a business concern that meets
3 the requirements of section 3(a) of the Small Business Act
4 (15 U.S.C. 632(a)) and the regulations promulgated pur-
5 suant to that section.

6 **SEC. 2555. AUTHORITY FOR DISTRICT COURTS TO OBTAIN**
7 **ADVISORY OPINIONS FROM BOARDS OF CON-**
8 **TRACT APPEALS IN CERTAIN CASES.**

9 Section 10 of the Contract Disputes Act of 1978 (41
10 U.S.C. 609) is amended by adding at the end the following
11 new paragraph:

12 “(f)(1) Whenever an action involving an issue de-
13 scribed in paragraph (2) is pending in a district court of
14 the United States, the district court may request a board
15 of contract appeals to provide the court with an advisory
16 opinion on the matters of contract interpretation at issue.

17 “(2) An issue referred to in paragraph (1) is any
18 issue that could be the proper subject of a final decision
19 of a contracting officer appealable under this Act.

20 “(3) A district court shall direct any request under
21 paragraph (1) to the board of contract appeals having ju-
22 risdiction under this Act to adjudicate appeals of contract
23 claims under the contract or contracts being interpreted
24 by the court.

1 “(4) Within ninety days after receiving a request for
 2 an advisory opinion under paragraph (1), a board of con-
 3 tract appeals shall provide the advisory opinion to the dis-
 4 trict court making the request.”.

5 **TITLE III—SERVICE SPECIFIC**
 6 **AND MAJOR SYSTEMS STATUTES**
 7 **Subtitle A—Major Systems Statutes**

8 **SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTI-**
 9 **MATES AND MANPOWER ESTIMATES BEFORE**
 10 **DEVELOPMENT OR PRODUCTION.**

11 (a) CONTENT AND SUBMISSION OF ESTIMATES.—
 12 Section 2434 of title 10, United States Code, is amended
 13 by striking out subsection (b) and inserting in lieu thereof
 14 the following:

15 “(b) REGULATIONS.—The Secretary of Defense shall
 16 prescribe regulations governing the content and submis-
 17 sion of the estimates required by subsection (a). The regu-
 18 lations shall require—

19 “(1) that the independent estimate of the cost
 20 of a program—

21 “(A) be prepared by an office or other en-
 22 tity that is not under the supervision, direction,
 23 or control of the military department, Defense
 24 Agency, or other component of the Department
 25 of Defense that is directly responsible for carry-

1 ing out the development or acquisition of the
2 program; and

3 “(B) include all costs of development, pro-
4 curement, and operations and support, without
5 regard to funding source or management con-
6 trol; and

7 “(2) that the manpower estimate include the
8 total personnel required to train for, operate, main-
9 tain, and support the program upon full operational
10 deployment.”.

11 (b) TERMINOLOGY CORRECTION.—Subsection (a) of
12 such section is amended by striking out “full-scale engi-
13 neering development” and inserting in lieu thereof “engi-
14 neering and manufacturing development”.

15 **SEC. 3002. ENHANCED PROGRAM STABILITY.**

16 (a) BASELINE DESCRIPTIONS AND DEVIATION RE-
17 PORTING.—Section 2435 of title 10, United States Code,
18 is amended—

19 (1) in subsection (a)—

20 (A) by striking out paragraph (2); and

21 (B) in paragraph (1)—

22 (i) by striking out “(1)”; and

23 (ii) by redesignating subparagraphs

24 (A) and (B) as paragraphs (1) and (2), re-

25 spectively; and

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

3 “(b) REGULATIONS.—The Secretary of Defense shall
4 prescribe regulations governing—

5 “(1) the content of baseline descriptions, which
6 shall include the program cost, the program sched-
7 ule, and a program performance description;

8 “(2) the submission of reports on deviations of
9 a program from the baseline description by the pro-
10 gram manager to the Secretary of the military de-
11 partment concerned and the Under Secretary of De-
12 fense for Acquisition and Technology;

13 “(3) procedures for review of deviation reports
14 within the Department of Defense; and

15 “(4) procedures for submission and approval of
16 revised baseline descriptions.

17 “(c) BASELINE DESCRIPTION REQUIRED BEFORE
18 OBLIGATION OF FUNDS.—(1) Except as provided in para-
19 graph (2), no amount appropriated or otherwise made
20 available to the Department of Defense may be obligated
21 for a major defense acquisition program before a baseline
22 description for the program is approved in accordance with
23 the procedures prescribed pursuant to subsection (b)(4).

1 “(2) An obligation otherwise prohibited by paragraph
 2 (1) may be incurred if approved in advance by the Under
 3 Secretary of Defense for Acquisition and Technology.”.

4 (b) TERMINOLOGY CORRECTION.—Subsection (a)(1)
 5 of such section, as redesignated by subsection
 6 (a)(1)(B)(ii), is amended by striking out “full-scale engi-
 7 neering development” and inserting in lieu thereof “engi-
 8 neering and manufacturing development”.

9 **SEC. 3003. REPEAL OF REQUIREMENT TO DESIGNATE CER-**
 10 **TAIN MAJOR DEFENSE ACQUISITION PRO-**
 11 **GRAMS AS DEFENSE ENTERPRISE PRO-**
 12 **GRAMS.**

13 Section 809 of the National Defense Authorization
 14 Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C.
 15 2430 note) is amended—

- 16 (1) by striking out subsection (d); and
 17 (2) by redesignating subsections (e), (f), (g),
 18 and (h) as subsections (d), (e), (f), and (g), respec-
 19 tively.

20 **SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE**
 21 **PROTOTYPING IN MAJOR PROGRAMS.**

22 (a) REPEAL.—Section 2438 of title 10, United States
 23 Code, is repealed.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 144 of such title is amended
3 by striking out the item relating to section 2438.

4 **SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE**
5 **ALTERNATIVE SOURCES IN MAJOR PRO-**
6 **GRAMS.**

7 (a) REPEAL.—Section 2439 of title 10, United States
8 Code, is repealed.

9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of chapter 144 of such title is amended
11 by striking out the item relating to section 2439.

12 **Subtitle B—Testing Statutes**

13 **SEC. 3011. DIRECTOR OF OPERATIONAL TEST AND EVALUA-**
14 **TION TO REPORT DIRECTLY TO SECRETARY**
15 **OF DEFENSE.**

16 Section 139(c) of title 10, United States Code, is
17 amended by inserting after “(c)” the following: “The Di-
18 rector reports directly, without intervening review or ap-
19 proval, to the Secretary of Defense and Deputy Secretary
20 of Defense personally.”.

1 **SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPER-**
2 **ATIONAL TEST AND EVALUATION FOR LIVE**
3 **FIRE TESTING.**

4 (a) CONDUCT OF LIVE FIRE TESTING.—Subsection
5 (b) of section 139 of title 10, United States Code, is
6 amended—

7 (1) by striking out “and” at the end of para-
8 graph (4);

9 (2) by striking out the period at the end of
10 paragraph (5) and inserting in lieu thereof “; and”;
11 and

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

14 “(6) conduct the live fire testing activities of
15 the Department of Defense provided for under sec-
16 tion 2366 of this title.”.

17 (b) ANNUAL REPORT ON LIVE FIRE TESTING.—Sub-
18 section (f) of such section is amended by inserting “(in-
19 cluding live fire testing activities)” in the first sentence
20 after “operational test and evaluation activities”.

21 **SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF**
22 **ANNUAL REPORT ON OPERATIONAL TEST**
23 **AND EVALUATION.**

24 Section 139(f) of title 10, United States Code, is
25 amended by inserting after the second sentence the follow-
26 ing new sentence: “If the Director submits the report to

1 Congress in a classified form, the Director shall concur-
 2 rently submit an unclassified version of the report to Con-
 3 gress.”.

4 **Subtitle C—Service Specific Laws**

5 **SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CER-** 6 **TAIN RESERVE COMPONENTS.**

7 Section 279 of title 10, United States Code, is
 8 amended—

9 (1) by striking out “Notwithstanding” and in-
 10 serting in lieu thereof “(a) ACCEPTANCE BY SEC-
 11 RETARY OF A MILITARY DEPARTMENT.—Notwith-
 12 standing”; and

13 (2) by adding at the end the following new sub-
 14 section:

15 “(b) ACCEPTANCE BY SECRETARY OF DEFENSE.—
 16 Notwithstanding section 1342 of title 31, the Secretary
 17 of Defense may accept the gratuitous services of an officer
 18 of a reserve component (other than an officer of the Army
 19 National Guard of the United States or the Air National
 20 Guard of the United States) in consultation upon matters
 21 relating to the armed forces.”.

22 **SEC. 3022. AUTHORITY TO RENT SAMPLES, DRAWINGS, AND** 23 **OTHER INFORMATION TO OTHERS.**

24 Subchapter V of chapter 148 of title 10, United
 25 States Code, is amended in section 2541(a) by inserting

1 “rent,” after “sell,” each place it appears in paragraphs
2 (1) and (2).

3 **SEC. 3023. CIVIL RESERVE AIR FLEET.**

4 (a) DEFINITIONS.—Section 9511 of title 10, United
5 States Code, is amended—

6 (1) in paragraph (1)—

7 (A) by inserting “‘civil aircraft,’” after
8 “‘person,’”;

9 (B) by striking out “meaning” and insert-
10 ing in lieu thereof “meanings”; and

11 (C) by striking out “(49 U.S.C. 1301)”
12 and inserting in lieu thereof “(49 U.S.C. App.
13 1301)”;

14 (2) in paragraph (2), by striking out “pas-
15 senger-cargo” and inserting in lieu thereof “pas-
16 senger cargo”;

17 (3) in paragraph (3), by striking out “cargo-ca-
18 pable” and inserting in lieu thereof “cargo capable”;

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

21 “(5) The term ‘cargo convertible aircraft’
22 means a passenger aircraft equipped or designed so
23 that all or substantially all of the main deck of the
24 aircraft can be readily converted for the carriage of
25 property or mail.”;

1 (5) by striking out paragraph (6);

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

4 (7) by redesignating paragraph (8) as para-
5 graph (7) and—

6 (A) in subparagraph (A) of such para-
7 graph, by inserting “under section 9512 of this
8 title” after “and who contracts with the Sec-
9 retary”;

10 (B) by striking out “or” at the end of such
11 subparagraph (A); and

12 (C) by inserting before the period at the
13 end of such paragraph the following: “, or (C)
14 who owns or controls existing aircraft, or will
15 own or control new aircraft, and who contrac-
16 tually commits all or some of such aircraft to
17 the Civil Reserve Air Fleet”;

18 (8) by redesignating paragraphs (9), (10), (11),
19 and (12) as paragraphs (8), (9), (10), and (11), re-
20 spectively; and

21 (9) in paragraph (11), as so redesignated—

22 (A) by striking out “interoperability” and
23 inserting in lieu thereof “compatibility”; and

24 (B) by striking out “a cargo-convertible,
25 cargo-capable, or passenger-cargo combined air-

1 craft” and inserting in lieu thereof “an
2 aeromedical aircraft or a cargo convertible,
3 cargo capable, or passenger cargo combined air-
4 craft”.

5 (b) CONSOLIDATION OF PROVISIONS RELATING TO
6 CONTRACTUAL COMMITMENT OF AIRCRAFT.—Chapter
7 931 of such title is amended—

8 (1) by redesignating subsections (b) and (c) of
9 section 9512 as subsections (c) and (d), respectively;

10 (2) by redesignating subsection (a) of section
11 9513 as subsection (b), transferring such subsection
12 (as so redesignated) to section 9512, and inserting
13 such subsection after subsection (a);

14 (3) by redesignating subsection (b) of section
15 9513 as subsection (e) and transferring such sub-
16 section (as so redesignated) to the end of section
17 9512;

18 (4) in subsection (c) of section 9512, as redes-
19 ignated by paragraph (1), by striking out “the terms
20 required by section 9513 of this title and”;

21 (5) in subsection (e) of section 9512, as redes-
22 ignated and transferred to such section by para-
23 graph (3), by striking out “under section 9512 of
24 this title” and inserting in lieu thereof “entered into
25 under this section”; and

1 (6) by striking out the heading of section 9513.

2 (c) USE OF MILITARY INSTALLATIONS BY CONTRAC-
3 TORS.—

4 (1) AUTHORITY.—Such chapter, as amended by
5 subsection (b), is further amended by adding at the
6 end the following new section 9513:

7 **“§ 9513. Use of military installations by Civil Reserve**
8 **Air Fleet contractors**

9 “(a) CONTRACT AUTHORITY.—(1) The Secretary of
10 the Air Force—

11 “(A) may, by contract entered into with any
12 contractor, authorize such contractor to use one or
13 more Air Force installations designated by the Sec-
14 retary; and

15 “(B) with the consent of the Secretary of an-
16 other military department, may, by contract entered
17 into with any contractor, authorize the contractor to
18 use one or more installations, designated by the Sec-
19 retary of the Air Force, that is under the jurisdic-
20 tion of the Secretary of such other military depart-
21 ment.

22 “(2) The Secretary of the Air Force may include in
23 the contract such terms and conditions as the Secretary
24 determines appropriate to promote the national defense or
25 to protect the interests of the United States.

1 “(b) PURPOSES OF USE.—A contract entered into
2 under subsection (a) may authorize use of a designated
3 installation as a weather alternate, a service stop not in-
4 volving the enplaning or deplaning of passengers or cargo,
5 or, in the case of an installation within the United States,
6 for other commercial purposes. Notwithstanding any other
7 provision of the law, the Secretary may establish different
8 levels and types of uses for different installations for com-
9 mercial operations not required by the Department of De-
10 fense and may provide in contracts under subsection (a)
11 for different levels and types of uses by different contrac-
12 tors.

13 “(c) DISPOSITION OF PAYMENTS FOR USE.—Not-
14 withstanding any other provision of law, amounts collected
15 from the contractor for landing fees, services, supplies, or
16 other charges authorized to be collected under the contract
17 shall be credited to the appropriations of the armed forces
18 having jurisdiction over the military installation to which
19 the contract pertains. Amounts so credited to an appro-
20 priation shall be available for obligation for the same pe-
21 riod as the appropriation to which credited.

22 “(d) HOLD HARMLESS REQUIREMENT.—A contract
23 entered into under subsection (a) shall provide that the
24 contractor agrees to indemnify and hold harmless the
25 United States from all actions, suits, or claims of any sort

1 resulting from, relating to, or arising out of any activities
 2 conducted, or services or supplies furnished, in connection
 3 with the contract.

4 “(e) RESERVATION OF RIGHT TO EXCLUDE CON-
 5 TRACTOR.—A contract entered into under subsection (a)
 6 shall provide that the Secretary or, in the case of an instal-
 7 lation under the jurisdiction of an armed force other than
 8 the Air Force, the Secretary concerned may at any time
 9 and without prior notice deny access to an installation des-
 10 ignated under the contract if military exigencies require
 11 such action.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
 13 tions at the beginning of such chapter is amended
 14 by striking out the item relating to section 9513 and
 15 inserting in lieu thereof the following:

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

16 **SEC. 3024. EXCHANGE OF PERSONNEL.**

17 (a) EXCHANGE AUTHORITY.—Subchapter II of chap-
 18 ter 138 of title 10, United States Code, is amended by
 19 adding at the end the following new section:

20 **“§ 2350k. Exchange of personnel**

21 “(a) INTERNATIONAL EXCHANGE AGREEMENTS AU-
 22 THORIZED.—Under regulations prescribed by the Sec-
 23 retary of Defense, the Secretary and the secretaries of the
 24 military departments are each authorized to enter into
 25 agreements with the governments of foreign countries for

1 the exchange of military and civilian personnel of the De-
2 partment of Defense and military and civilian personnel
3 of the defense departments or ministries of such foreign
4 governments.

5 “(b) ASSIGNMENT OF PERSONNEL.—Pursuant to
6 such agreements, personnel of the foreign defense depart-
7 ments or ministries may be assigned to positions in the
8 Department of Defense, and personnel of the Department
9 of Defense may be assigned to positions in foreign defense
10 departments or ministries. Agreements for the exchange
11 of personnel engaged in research and development activi-
12 ties may provide for assignments to positions in private
13 industry that support the defense departments or min-
14 istries. The specific positions and the individuals to be as-
15 signed must be acceptable to both the sending government
16 and the host government.

17 “(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS
18 REQUIRED.—Each government shall be required under an
19 agreement authorized by subsection (a) to provide person-
20 nel having qualifications, training, and skills that are es-
21 sentially equal to those of the personnel provided by the
22 other government.

23 “(d) PAYMENT OF PERSONNEL COSTS.—Each gov-
24 ernment shall pay the salary, per diem, cost of living, trav-
25 el, cost of language or other training, and other costs (ex-

cept for cost of temporary duty directed by the host government and costs incident to the use of host government facilities in the performance of assigned duties) for its own personnel in accordance with the laws and regulations of such government that pertain to such matters.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by adding at the end the following new item:

“2350k. Exchange of personnel.”.

**SEC. 3025. SCIENTIFIC INVESTIGATION AND RESEARCH
FOR THE NAVY.**

(a) REPEAL.—Section 7203 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7203.

**SEC. 3026. CONSTRUCTION OF COMBATANT AND ESCORT
VESSELS AND ASSIGNMENT OF VESSEL
PROJECTS.**

(a) REPEAL OF OBSOLETE AND INTERNALLY INCONSISTENT PROVISIONS.—Section 7299a of title 10, United States Code, is amended—

(1) by striking out subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

1 (b) CONFORMING AMENDMENT.—Subsection (b) of
 2 such section, as redesignated by subsection (a)(2), is
 3 amended in paragraph (2) by striking out “subsection (a)
 4 or”.

5 **SEC. 3027. REPEAL OF REQUIREMENT FOR CONSTRUCTION**
 6 **OF VESSELS ON PACIFIC COAST.**

7 (a) REPEAL.—Section 7302 of title 10, United States
 8 Code, is repealed.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 at the beginning of chapter 633 of such title is amended
 11 by striking out the item relating to section 7302.

12 **SEC. 3028. AUTHORITY TO TRANSFER BY GIFT A VESSEL**
 13 **STRICKEN FROM NAVAL VESSEL REGISTER.**

14 Section 7306(a)(1) of title 10, United States Code,
 15 is amended by inserting “Territory,” after “State,”.

16 **SEC. 3029. NAVAL SALVAGE FACILITIES.**

17 Chapter 637 of title 10, United States Code, is
 18 amended—

19 (1) in section 7361—

20 (A) in subsection (a), by inserting “AU-
 21 THORITY TO PROVIDE FACILITIES BY CON-
 22 TRACT OR OTHERWISE.—” after “(a)”;

23 (B) in subsection (b), by inserting “CON-
 24 TRACTS AFFECTING THE DEPARTMENT OF
 25 TRANSPORTATION.—” after “(b)”;

1 (C) by striking out subsection (c) and in-
2 serting in lieu thereof the following new sub-
3 section (c):

4 “(c) LIMITATION ON TERM CONTRACTS.—Term con-
5 tracts may be entered into for purposes of this section only
6 after—

7 “(1) it has been demonstrated to the satisfac-
8 tion of the Secretary of the Navy that available com-
9 mercial salvage facilities are inadequate to meet na-
10 tional defense requirements; and

11 “(2) the Secretary of the Navy determines that
12 adequate public notice of intent to exercise the au-
13 thority under this subsection has been provided.”;

14 (2) by designating the text of section 7362 as
15 subsection (d) and transferring such text, as so des-
16 ignated, to the end of section 7361 of title 10,
17 United States Code;

18 (3) in subsection (d) of section 7361 of such
19 title, as so designated and transferred, by inserting
20 before “The Secretary” the following: “COMMERCIAL
21 USE OF NAVAL VESSELS AND EQUIPMENT.—”;

22 (4) by designating the text of section 7363 as
23 subsection (e) and transferring such text, as so des-
24 ignated, to the end of section 7361 of title 10,
25 United States Code;

1 (5) in subsection (e) of section 7361 of such
2 title, as so designated and transferred, by inserting
3 before “Before any salvage vessel” the following:
4 “CONDITIONS FOR TRANSFER OF EQUIPMENT.—”;

5 (6) by designating the text of section 7365 as
6 subsection (f) and transferring such text, as so des-
7 ignated, to the end of section 7361 of title 10,
8 United States Code;

9 (7) in subsection (f) of section 7361 of such
10 title, as so designated and transferred, by inserting
11 before “The Secretary” the following: “SETTLE-
12 MENT OF CLAIMS.—”;

13 (8) by designating the text of section 7367 as
14 subsection (g) and transferring such text, as so des-
15 ignated, to the end of section 7361 of title 10,
16 United States Code;

17 (9) in subsection (g) of section 7361 of such
18 title, as so designated and transferred—

19 (A) by inserting before “Money received”
20 the following: “DISPOSITION OF RECEIPTS.—”;
21 and

22 (B) by striking out “this chapter” in the
23 first sentence and inserting in lieu thereof “this
24 section”;

1 (10) by striking out the section headings for
2 sections 7362, 7363, 7365, and 7367;

3 (11) by striking out the heading for section
4 7361 and inserting in lieu thereof the following:

5 **“§ 7361. Navy support for salvage operations”;**

6 and

7 (12) in the table of sections at the beginning of
8 such chapter—

9 (A) by striking out the item relating to
10 section 7361 and inserting in lieu thereof the
11 following:

“7361. Navy support for salvage operations.”;

12 and

13 (B) by striking out the items relating to
14 sections 7362, 7363, 7365, and 7367.

15 **Subtitle D—Department of Defense**
16 **Commercial and Industrial Ac-**
17 **tivities**

18 **SEC. 3051. ACCOUNTING REQUIREMENT FOR CONTRACTED**
19 **ADVISORY AND ASSISTANCE SERVICES.**

20 (a) FUNDING TO BE IDENTIFIED IN BUDGET.—Sec-
21 tion 1105 of title 31, United States Code, is amended by
22 adding at the end the following new subsection:

23 “(g)(1) The Director of the Office of Management
24 and Budget shall establish the funding for advisory and
25 assistance services for each department and agency as a

1 separate object class in each budget annually submitted
2 to the Congress under this section.

3 “(2)(A) In paragraph (1), except as provided in sub-
4 paragraph (B), the term ‘advisory and assistance services’
5 means the following services when provided by nongovern-
6 mental sources:

7 “(i) Management and professional support serv-
8 ices.

9 “(ii) Studies, analyses, and evaluations.

10 “(iii) Engineering and technical services.

11 “(B) In paragraph (1), the term ‘advisory and assist-
12 ance services’ does not include the following services:

13 “(i) Routine automated data processing and
14 telecommunications services unless such services are
15 an integral part of a contract for the procurement
16 of advisory and assistance services.

17 “(ii) Architectural and engineering services.

18 “(iii) Technical support of research and devel-
19 opment activities.

20 “(iv) Research on basic mathematics or medi-
21 cal, biological, physical, social, psychological, or
22 other phenomena.”.

23 (b) REPEAL OF SOURCE LAW.—Section 512 of Pub-
24 lic Law 102–394 (106 Stat. 1826) is repealed.

25 (c) REPEAL OF SUPERSEDED PROVISIONS.—

1 (1) TITLE 10.—

2 (A) REPEAL.—Section 2212 of title 10,
3 United States Code, is repealed.

4 (B) CLERICAL AMENDMENT.—The table of
5 sections at the beginning of chapter 131 of such
6 title is amended by striking out the item relat-
7 ing to section 2212.

8 (2) TITLE 31.—

9 (A) REPEAL.—Section 1114 of title 31,
10 United States Code, is repealed.

11 (B) CLERICAL AMENDMENT.—The table of
12 sections at the beginning of chapter 11 of such
13 title is amended by striking out the item relat-
14 ing to section 1114.

15 **Subtitle E—Fuel- and Energy-**
16 **Related Laws**

17 **SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS**
18 **FOR STORAGE, HANDLING, OR DISTRIBUTION.**
19

20 Section 2388(a) of title 10, United States Code, is
21 amended by striking out “liquid fuels and natural gas”
22 and inserting in lieu thereof “liquid fuels or natural gas”.

1 **Subtitle F—Fiscal Statutes**

2 **SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DE-**
 3 **PARTMENT TO COVER OBLIGATIONS OF AN-**
 4 **OTHER AGENCY OF DEPARTMENT OF DE-**
 5 **FENSE.**

6 Subsection (c)(2) of section 3321 of title 31, United
 7 States Code, is amended by striking out “military depart-
 8 ments of the” and inserting in lieu thereof “The”.

9 **Subtitle G—Miscellaneous**

10 **SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.**

11 Section 2202 of title 10, United States Code, is
 12 amended to read as follows:

13 **“§ 2202. Obligation of funds: limitation**

14 “The Secretary of Defense shall prescribe regulations
 15 governing the performance within the Department of De-
 16 fense of the procurement, production, warehousing, and
 17 supply distribution functions, and related functions, of the
 18 Department of Defense.”.

19 **SEC. 3082. REPEAL OF REQUIREMENTS REGARDING PROD-**
 20 **UCT EVALUATION ACTIVITIES.**

21 (a) **REPEAL.**—Section 2369 of title 10, United States
 22 Code, is repealed.

23 (b) **CLERICAL AMENDMENT.**—The table of sections
 24 at the beginning of chapter 139 of such title is amended
 25 by striking out the item related to section 2369.

1 **SEC. 3083. CODIFICATION AND REVISION OF LIMITATION**
2 **ON LEASE OF VESSELS, AIRCRAFT, AND VEHI-**
3 **CLES.**

4 (a) **LIMITATION.**—

5 (1) **IN GENERAL.**—Chapter 141 of title 10,
6 United States Code, is amended by adding at the
7 end the following new section:

8 **“§ 2410l. Lease of vessels, aircraft, and vehicles**

9 “The head of an agency named in paragraph (1), (2),
10 (3), or (4) of section 2303(a) of this title may not enter
11 into any contract with a term of 18 months or more, or
12 extend or renew any contract for a term of 18 months
13 or more, for any vessel, aircraft, or vehicle, through a
14 lease, charter, or similar agreement without previously
15 having considered all costs of such lease (including esti-
16 mated termination liability) and determined in writing
17 that such lease is in the best interest of the Government.”.

18 (2) **CLERICAL AMENDMENT.**—The table of sec-
19 tions at the beginning of such chapter is amended
20 by adding at the end the following:

“2410l. Lease of vessels, aircraft, and vehicles.”.

21 (b) **REPEAL OF SUPERSEDED PROVISION.**—Section
22 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.
23 2401 note) is repealed.

1 **SEC. 3084. SOFT DRINK SUPPLIES FOR EXCHANGE STORES.**

2 Section 2424 of title 10, United States Code, is
3 amended by adding at the end the following new sub-
4 section:

5 “(c) Paragraphs (1) and (2) of subsection (b) do not
6 apply to contracts for the procurement of soft drinks that
7 are manufactured in the United States. The Secretary of
8 Defense shall prescribe in regulations the standards and
9 procedures for determining whether a particular drink is
10 a soft drink and whether the drink was manufactured in
11 the United States.”.

12 **SEC. 3085. REPEAL OF PREFERENCE FOR RECYCLED**
13 **TONER CARTRIDGES.**

14 The following provisions of law, relating to a pref-
15 erence for procurement of recycled toner cartridges, are
16 repealed:

17 (1) Section 630 of Public Law 102–393 (106
18 Stat. 1773) and the provision of law set out in
19 quotes in that section (42 U.S.C. 6962(j)).

20 (2) Section 401 of Public Law 103–123 (107
21 Stat. 1238).

1 **TITLE IV—SIMPLIFIED ACQUISITION**
2 **THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS,**
3 **AND MISCELLANEOUS**
4 **LAWS**

5 **Subtitle A—Simplified Acquisition**
6 **Threshold**

7 **PART I—ESTABLISHMENT OF THRESHOLD**

8 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.**

9 (a) **TERM DEFINED.**—Section 4(11) of the Office of
10 Federal Procurement Policy Act (41 U.S.C. 403(11)) is
11 amended to read as follows:

12 “(11) The term ‘simplified acquisition thresh-
13 old’ means \$100,000.”.

14 (b) **INTERIM REPORTING RULE.**—Until October 1,
15 1999, procuring activities shall continue to report procure-
16 ment awards with a dollar value of at least \$25,000, but
17 less than \$100,000, in conformity with the procedures for
18 the reporting of a contract award in excess of \$25,000
19 that were in effect on October 1, 1992.

20 **PART II—SIMPLIFICATION OF PROCEDURES**

21 **SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.**

22 The Office of Federal Procurement Policy Act (41
23 U.S.C. 401 et seq.) is amended by adding at the end the
24 following new section:
25

1 “SIMPLIFIED ACQUISITION PROCEDURES

2 “SEC. 29. (a) In order to promote efficiency and
3 economy in contracting and to avoid unnecessary burdens
4 for agencies and contractors, the Federal Acquisition Reg-
5 ulation shall provide for special simplified procedures for
6 contracts for acquisition of property and services that are
7 not in excess of the simplified acquisition threshold.

8 “(b) Regulations prescribed pursuant to subsection
9 (a) shall include the following provisions:

10 “(1) A provision that a contract with an antici-
11 pated value not in excess of \$2,500 is not subject to
12 section 15(j) of the Small Business Act (15 U.S.C.
13 644(j)) and section 2 of title III of the Act of March
14 3, 1933 (commonly known as the ‘Buy America
15 Act’) (41 U.S.C. 10a et seq.).

16 “(2) A provision that a civilian or military offi-
17 cial, or employee of an agency, whose contracting
18 authority does not exceed \$2,500 is not a procure-
19 ment official for the purposes of section 27 of this
20 Act.

21 “(3) A provision that a purchase not in excess
22 of \$2,500 may be made without obtaining competi-
23 tive quotations if the contracting officer determines
24 that the price for the purchase is reasonable.

1 “(4) A requirement that purchases not in ex-
2 cess of \$2,500 be distributed equitably among quali-
3 fied suppliers.

4 “(5) A requirement that a contracting officer
5 consider each responsive offer timely received from
6 an eligible offeror.

7 “(c) A proposed purchase or contract for an amount
8 above the simplified acquisition threshold may not be di-
9 vided into several purchases or contracts for lesser
10 amounts in order to use the simplified acquisition proce-
11 dures required by subsection (a).

12 “(d) In using simplified acquisition procedures, the
13 head of an executive agency shall promote competition to
14 the maximum extent practicable.”.

15 **SEC. 4012. SMALL BUSINESS RESERVATION.**

16 Section 15(j) of the Small Business Act (15 U.S.C.
17 644(j)) is amended to read as follows:

18 “(j)(1) Each contract for the purchase of goods and
19 services that has an anticipated value in excess of \$2,500
20 but not in excess of the simplified acquisition threshold
21 and that is subject to simplified acquisition procedures
22 prescribed pursuant to section 29 of the Office of Federal
23 Procurement Policy Act shall be reserved exclusively for
24 small business concerns unless the contracting officer is
25 unable to obtain offers from two or more small business

1 concerns that are competitive with market prices and are
2 competitive with regard to the quality and delivery of the
3 goods or services being purchased.

4 “(2) In carrying out paragraph (1), a contracting of-
5 ficer shall consider a responsive offer timely received from
6 an eligible small business offeror.

7 “(3) Nothing in paragraph (1) shall be construed as
8 precluding an award of a contract with a value not in ex-
9 cess of the simplified acquisition threshold under the au-
10 thority of subsection (a) or (c) of section 8 of this Act,
11 section 2323 of title 10, United States Code, or section
12 712 of the Business Opportunity Development Reform Act
13 of 1988 (Public Law 100–656; 15 U.S.C. 644 note).”.

14 **SEC. 4013. FAST PAYMENT UNDER SIMPLIFIED ACQUISITION PROCEDURES.**
15

16 (a) **PAYMENT PROCEDURES.**—The simplified acquisi-
17 tion procedures described in section 29(a) of the Office
18 of Federal Procurement Policy Act (as added by section
19 4011) shall provide for use of the payment terms described
20 in subsection (b), and for the disbursement of payment
21 through electronic fund transfer, whenever circumstances
22 permit.

23 (b) **REQUIRED PAYMENT TERMS.**—The payment
24 terms for a purchase made pursuant to simplified acquisi-
25 tion procedures shall require payment, in accordance with

1 the provisions of chapter 39 of title 31, United States
2 Code, within 15 days after the date of the receipt of a
3 proper invoice for products delivered or services per-
4 formed, if—

5 (1) in the case of a purchase of property, title
6 to the property vests in the Government upon deliv-
7 ery of the property to the Government or to a com-
8 mon carrier;

9 (2) in the case of property or services for which
10 payment is due before the Government's acceptance
11 of the property or services, the vendor provides com-
12 mercial or other appropriate warranties assuring
13 that the property or services purchased conform to
14 the requirements set forth in the Government's pur-
15 chase offer; and

16 (3) funds are available for making the payment.

17 (c) DISBURSEMENTS TO BE MATCHED WITH OBLI-
18 GATIONS.—The simplified acquisition procedures shall in-
19 clude procedures that ensure that each request for a dis-
20 bursement is matched with a particular obligation before
21 the disbursement is made under the payment terms pro-
22 vided for under subsection (a).

23 **SEC. 4014. PROCUREMENT NOTICE.**

24 (a) CONTINUATION OF EXISTING NOTICE THRESH-
25 OLDS.—Subsection (a) of section 18 of the Office of Fed-

1 eral Procurement Policy Act (41 U.S.C. 416) is amend-
2 ed—

3 (1) in paragraph (1), by striking out “the small
4 purchase threshold” each place it appears and in-
5 serting in lieu thereof “\$25,000”; and

6 (2) in paragraph (3)(B), by inserting after
7 “(B)” the following: “in the case of a contract or
8 order expected to exceed the simplified acquisition
9 threshold,”.

10 (b) CONTENT OF NOTICE.—Subsection (b) of such
11 section is amended—

12 (1) by striking out “and” at the end of para-
13 graph (4);

14 (2) by striking out the period at the end of
15 paragraph (5) and inserting in lieu thereof a semi-
16 colon; and

17 (3) by adding at the end the following:

18 “(6) in the case of a contract in an amount es-
19 timated to exceed \$25,000 but not to exceed the
20 simplified acquisition threshold—

21 “(A) a description of the procedures to be
22 used in awarding the contract; and

23 “(B) a statement specifying the periods for
24 prospective offerors and the contracting officer

1 to take the necessary preaward and award ac-
 2 tions.”.

3 (c) NOTICE NOT REQUIRED IN ELECTRONIC COM-
 4 MERCE.—Subsection (c)(1) of such section, as amended
 5 by section 1055(b), is further amended—

6 (1) by redesignating subparagraphs (A), (B),
 7 (C), (D), (E) and (F) as subparagraphs (B), (C),
 8 (D), (E), (F), and (G), respectively; and

9 (2) by inserting above subparagraph (B), as so
 10 redesignated, the following new subparagraph (A):

11 “(A) the proposed procurement is conducted by
 12 means of electronic commerce pursuant to a system
 13 that, as determined by the Administrator for Fed-
 14 eral Procurement Policy, has the capabilities de-
 15 scribed in subsections (a) and (b) of section 4015 of
 16 the Federal Acquisition Streamlining Act of 1994;”.

17 (d) NOTICE UNDER THE SMALL BUSINESS ACT.—

18 (1) CONTINUATION OF EXISTING NOTICE
 19 THRESHOLDS.—Subsection (e) of section 8 of the
 20 Small Business Act (15 U.S.C. 637) is amended—

21 (A) in paragraph (1), by striking out “the
 22 small purchase threshold” each place it appears
 23 and inserting in lieu thereof “\$25,000”; and

24 (B) in paragraph (3)(B), by inserting after
 25 “(B)” the following: “in the case of a contract

1 or order estimated to exceed the simplified ac-
 2 quisition threshold.”.

3 (2) CONTENT OF NOTICE.—Subsection (f) of
 4 such section is amended—

5 (A) by striking out “and” at the end of
 6 paragraph (4);

7 (B) by striking out the period at the end
 8 of paragraph (5) and inserting in lieu thereof a
 9 semicolon; and

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

11 “(6) in the case of a contract in an amount es-
 12 timated to exceed the \$25,000 but not to exceed the
 13 simplified acquisition threshold—

14 “(A) a description of the procedures to be
 15 used in awarding the contract; and

16 “(B) a statement specifying the periods for
 17 prospective offerors and the contracting officer
 18 to take the necessary preaward and award ac-
 19 tions.”.

20 **SEC. 4015. ELECTRONIC COMMERCE FOR FEDERAL GOV-**
 21 **ERNMENT PROCUREMENTS.**

22 (a) DEVELOPMENT AND IMPLEMENTATION OF SYS-
 23 TEM.—The Administrator for Federal Procurement Pol-
 24 icy, in consultation with the heads of appropriate Federal
 25 Government agencies having applicable technical and

1 functional expertise, may take appropriate steps to develop
2 and implement a Federal Governmentwide architecture or
3 design for electronic commerce that provides interoper-
4 ability among users.

5 (b) REQUIRED CAPABILITIES.—The requirements
6 analysis prepared to implement the architecture or design
7 of a system of electronic commerce referred to in sub-
8 section (a) shall have the following capabilities:

9 (1) The maximum practicable capability for
10 electronic exchange of such procurement information
11 as solicitations, offers, contracts, purchase orders,
12 invoices, payments, and other contractual documents
13 between the private sector and the Federal Govern-
14 ment.

15 (2) Capabilities that increase the access of busi-
16 nesses, including small business concerns, socially
17 and economically disadvantaged small business con-
18 cerns, and businesses owned predominantly by
19 women, to Federal Government procurement oppor-
20 tunities.

21 (3) Easy access for potential Federal Govern-
22 ment contractors.

23 (4) Use of nationally and internationally recog-
24 nized data formats that broaden and ease electronic
25 interchange of data.

1 (5) Use of Federal Government systems and
2 networks and industry systems and networks.

3 (c) NOTICE AND SOLICITATION REGULATIONS.—In
4 connection with implementation of the architecture or de-
5 sign referred to in subsection (a), the Federal Acquisition
6 Regulatory Council shall ensure that the Federal Acquisi-
7 tion Regulation contains appropriate notice and solicita-
8 tion provisions applicable to acquisitions conducted
9 through such architecture or design. The provisions shall
10 specify the required form and content of notices of acquisi-
11 tions and the minimum periods for notifications of solicita-
12 tions and for deadlines for the submission of offers under
13 solicitations. Each minimum period specified for a notifi-
14 cation of solicitation and each deadline for the submission
15 of offers under a solicitation shall afford potential offerors
16 a reasonable opportunity to respond.

17 (d) LIMITATION OF PUBLICATION REQUIREMENT.—
18 The requirement in section 18(a) of the Office of Federal
19 Procurement Policy Act (41 U.S.C. 416(a)) and section
20 8(e) of the Small Business Act (15 U.S.C. 637(e)) for
21 publishing notice of a solicitation in the Commerce Busi-
22 ness Daily shall not apply to acquisitions of a Federal
23 agency or a component of a Federal agency that are made
24 through electronic commerce and have a value not in ex-
25 cess of the simplified acquisition threshold if the Federal

1 Acquisition Regulation contains the provisions specifically
 2 required by subsection (c) and the Administrator for Fed-
 3 eral Procurement Policy certifies that such agency or com-
 4 ponent—

5 (1) has fully implemented the architecture or
 6 design referred to in subsection (a); and

7 (2) has procedures in place—

8 (A) to provide notice to potential offerors
 9 in accordance with the requirements of the Fed-
 10 eral Acquisition Regulation prescribed pursuant
 11 to subsection (c); and

12 (B) to ensure that small business concerns
 13 are afforded an opportunity to respond to a so-
 14 licitation of contract offers within the period
 15 specified in the solicitation.

16 (e) DEFINITION.—In this section, the term “sim-
 17 plified acquisition threshold” has the meaning given that
 18 term is section 4(11) of the Office of Federal Procurement
 19 Policy Act (41 U.S.C. 403(11)).

20 **PART III—APPLICABILITY OF LAWS TO ACQUISI-**
 21 **TIONS NOT IN EXCESS OF SIMPLIFIED AC-**
 22 **QUISITION THRESHOLD**

23 **SEC. 4021. FUTURE ENACTED PROCUREMENT LAWS.**

24 The Office of Federal Procurement Policy Act (41
 25 U.S.C. 401 et seq.), as amended by section 4011, is fur-

1 ther amended by adding at the end the following new sec-
2 tion:

3 “APPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT
4 EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

5 “SEC. 30. (a) IN GENERAL.—The applicability of a
6 provision of law described in subsection (b) to contracts
7 not in excess of the simplified acquisition threshold may
8 be waived on a class basis in the Federal Acquisition Reg-
9 ulation. Such a waiver shall not apply to a provision of
10 law that expressly refers to this section and prohibits the
11 waiver of that provision of law.

12 “(b) REFERENCED LAW.—A provision of law referred
13 to in subsection (a) is any provision of law enacted after
14 the date of the enactment of the Federal Acquisition
15 Streamlining Act of 1994 that, as determined by the Ad-
16 ministrator for Federal Procurement Policy, sets forth
17 policies, procedures, requirements, or restrictions for the
18 procurement of property or services by the Federal Gov-
19 ernment.”.

20 **SEC. 4022. ARMED SERVICES ACQUISITIONS.**

21 (a) REQUIREMENT FOR CONTRACT CLAUSE REGARD-
22 ING CONTINGENT FEES.—Section 2306(b) of title 10,
23 United States Code, is amended by adding at the end the
24 following: “This subsection does not apply to a contract
25 that is not in excess of the simplified acquisition thresh-
26 old.”.

1 (b) PROHIBITION ON LIMITING SUBCONTRACTOR DI-
2 RECT SALES TO THE UNITED STATES.—Section 2402 of
3 title 10, United States Code, is amended by adding at the
4 end the following new subsection:

5 “(c) This section does not apply to a contract that
6 is not in excess of the simplified acquisition threshold (as
7 defined in section 4(11) of the Office of Federal Procure-
8 ment Policy Act (41 U.S.C. 403(11))).”.

9 (c) AUTHORITY TO EXAMINE BOOKS AND RECORDS
10 OF CONTRACTORS.—Section 2313 of title 10, United
11 States Code, as amended by section 2201, is further
12 amended by adding at the end of subsection (f) the follow-
13 ing:

14 “(2) A contract that is not in excess of the sim-
15 plified acquisition threshold.”.

16 (d) REQUIREMENT TO IDENTIFY SUPPLIERS AND
17 SOURCES OF SUPPLIES.—Section 2384(b) of title 10,
18 United States Code, is amended by adding at the end the
19 following new paragraph:

20 “(3) The regulations prescribed pursuant to para-
21 graph (1) do not apply to a contract that does not exceed
22 the simplified acquisition threshold (as defined in section
23 4(11) of the Office of Federal Procurement Policy Act (41
24 U.S.C. 403(11))).”.

1 (e) PROHIBITION AGAINST DOING BUSINESS WITH
2 CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d)
3 of title 10, United States Code, is amended in the second
4 sentence by striking out “above” and all that follows and
5 inserting in lieu thereof “in excess of the simplified acqui-
6 sition threshold (as defined in section 4(11) of the Office
7 of Federal Procurement Policy Act (41 U.S.C.
8 403(11))).”.

9 (f) PROHIBITION ON PERSONS CONVICTED OF DE-
10 FENSE-CONTRACT RELATED FELONIES.—Section
11 2408(a) of title 10, United States Code, is amended by
12 adding at the end the following new paragraph:

13 “(4) The prohibition in paragraph (1) does not apply
14 with respect to the following:

15 “(A) A contract referred to in subparagraph
16 (A), (B), (C), or (D) of such paragraph that is not
17 in excess of the simplified acquisition threshold (as
18 defined in section 4(11) of the Office of Federal
19 Procurement Policy Act (41 U.S.C. 403(11))).

20 “(C) A subcontract referred to in such subpara-
21 graph that is under a contract described in subpara-
22 graph (A).”.

23 **SEC. 4023. CIVILIAN AGENCY ACQUISITIONS.**

24 (a) REQUIREMENT FOR CONTRACT CLAUSE REGARD-
25 ING CONTINGENT FEES.—Section 304(a) of the Federal

1 Property and Administrative Services Act of 1949 (41
2 U.S.C. 254(a)) is amended by adding at the end the fol-
3 lowing: “The preceding sentence does not apply to a con-
4 tract that is not in excess of the simplified acquisition
5 threshold.”.

6 (b) PROHIBITION ON LIMITING SUBCONTRACTOR DI-
7 RECT SALES TO THE UNITED STATES.—Section 303G of
8 the Federal Property and Administrative Services Act of
9 1949 (41 U.S.C. 253g) is amended by adding at the end
10 the following new subsection:

11 “(c) This section does not apply to a contract that
12 is not in excess of the simplified acquisition threshold.”.

13 (c) AUTHORITY TO EXAMINE BOOKS AND RECORDS
14 OF CONTRACTORS.—Section 304B of the Federal Prop-
15 erty and Administrative Services Act of 1949, as added
16 by section 2251(a), is amended by adding at the end of
17 subsection (f) the following:

18 “(2) A contract that is not in excess of the sim-
19 plified acquisition threshold.”.

20 **SEC. 4024. ACQUISITIONS GENERALLY.**

21 (a) LIMITATION ON USE OF FUNDS TO INFLUENCE
22 CERTAIN FEDERAL ACTIONS.—Section 1352(e)(2)(B) of
23 title 31, United States Code, is amended by striking out
24 “\$100,000” and inserting in lieu thereof “the simplified
25 acquisition threshold (as defined in section 4(11) of the

1 Office of Federal Procurement Policy Act (41 U.S.C.
2 403(11)))”.

3 (b) REQUIREMENT FOR CONTRACT CLAUSE RELAT-
4 ING TO KICKBACKS.—Section 7 of the Anti-Kickback Act
5 of 1986 (41 U.S.C. 57) is amended by adding at the end
6 the following new subsection:

7 “(d) Subsections (a) and (b) do not apply to a prime
8 contract that is not in excess of the simplified acquisition
9 threshold (as defined in section 4(11) of the Office of Fed-
10 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

11 (c) MILLER ACT.—

12 (1) IN GENERAL.—

13 (A) CONTRACTS NOT EXCEEDING SIM-
14 PLIFIED ACQUISITION THRESHOLD.—The Act
15 of August 24, 1935 (40 U.S.C. 270a et seq.),
16 commonly referred to as the “Miller Act”, is
17 amended by adding at the end the following
18 new section:

19 “SEC. 5. This Act does not apply to a contract in
20 an amount that is not in excess of the simplified acquisi-
21 tion threshold (as defined in section 4(11) of the Office
22 of Federal Procurement Policy Act (41 U.S.C.
23 403(11))).”.

24 (B) CONFORMING AMENDMENT.—Sub-
25 section (a) of the first section of such Act is

1 amended by striking out “, exceeding \$25,000
2 in amount,”.

3 (2) ALTERNATIVE PAYMENT PROTECTIONS.—

4 (A) PROTECTIONS TO BE SPECIFIED IN
5 THE FAR.—The Federal Acquisition Regulation
6 shall provide alternatives to payment bonds as
7 payment protections for suppliers of labor and
8 materials under contracts referred to in sub-
9 paragraph (C).

10 (B) USE OF AUTHORIZED PROTECTIONS.—

11 The contracting officer for a contract shall—

12 (i) select, from among the payment
13 protections provided for in the Federal Ac-
14 quisition Regulation pursuant to subpara-
15 graph (A), one or more payment protec-
16 tions which the offeror awarded the con-
17 tract is to submit to the Federal Govern-
18 ment for the protection of suppliers of
19 labor and materials for such contract; and

20 (ii) specify in the solicitation of offers
21 for such contract the payment protection
22 or protections so selected.

23 (C) COVERED CONTRACTS.—

24 (i) APPLICABILITY.—The regulations
25 required under subparagraph (A) and the

1 requirements of subparagraph (B) apply
2 with respect to contracts referred to in
3 subsection (a) of the first section of the
4 Miller Act that are in excess of \$25,000
5 but not in excess of the simplified acquisi-
6 tion threshold (as defined in section 4(11)
7 of the Office of Federal Procurement Pol-
8 icy Act (41 U.S.C. 403(11))).

9 (ii) MILLER ACT REFERENCE.—The
10 Miller Act referred to in subparagraph (A)
11 is the Act of August 24, 1935 (40 U.S.C.
12 270a et seq.), commonly referred to as the
13 “Miller Act”.

14 (d) CONTRACT WORK HOURS AND SAFETY STAND-
15 ARDS ACT.—

16 (1) IN GENERAL.—Section 103 of the Contract
17 Work Hours and Safety Standards Act (40 U.S.C.
18 329) is amended by adding at the end the following
19 new subsection:

20 “(c) This title does not apply to a contract in an
21 amount that is not in excess of the simplified acquisition
22 threshold (as defined in section 4(11) of the Office of Fed-
23 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

24 (2) CONFORMING AMENDMENT.—Section
25 107(a) of such Act (40 U.S.C. 333(a)) is amended

1 by inserting after “It shall be a condition of each
2 contract” the following: “(other than a contract re-
3 ferred to in section 103(c))”.

4 (e) DRUG-FREE WORKPLACE ACT OF 1988.—Section
5 5152(a)(1) of the Drug-Free Workplace Act of 1988 (sub-
6 title D of title V of the Anti-Drug Abuse Act of 1988;
7 Public Law 100–690; 41 U.S.C. 701(a)(1)) is amended
8 by striking out “of \$25,000 or more from any Federal
9 agency” and inserting in lieu thereof “in excess of the sim-
10 plified acquisition threshold (as defined in section 4(11)
11 of such Act (41 U.S.C. 403(11))) by any Federal agency”.

12 (f) CERTAIN PROCUREMENT INTEGRITY REQUIRE-
13 MENTS.—

14 (1) CERTIFICATION REQUIREMENT.—Sub-
15 section (e)(7)(A) of section 27 of the Office of Fed-
16 eral Procurement Policy Act (41 U.S.C. 423) is
17 amended by striking out “\$100,000” and inserting
18 in lieu thereof “the simplified acquisition threshold”.

19 (2) CONTRACT CLAUSE REQUIREMENT.—Sub-
20 section (g)(1) of such section is amended by insert-
21 ing after “awarded by a Federal agency” the follow-
22 ing: “(other than a contract in an amount that is
23 not in excess of the simplified acquisition thresh-
24 old)”.

1 (g) SOLID WASTE DISPOSAL ACT.—Section 6002(a)
 2 of the Solid Waste Disposal Act (42 U.S.C. 6962(a)) is
 3 amended by striking out all that follows “with respect to
 4 any” and inserting in lieu thereof “contract in excess of
 5 the simplified acquisition threshold (as defined in section
 6 4(11) of the Office of Federal Procurement Policy Act (41
 7 U.S.C. 403(11))).”.

8 **PART IV—CONFORMING AMENDMENTS**

9 **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

10 (a) SIMPLIFIED ACQUISITION PROCEDURES.—Sec-
 11 tion 2304(g) of title 10, United States Code, is amended—

12 (1) in paragraph (1), by striking out “small
 13 purchases of property and services” and inserting in
 14 lieu thereof “purchases of property and services not
 15 in excess of the simplified acquisition threshold”;

16 (2) by striking out paragraph (2);

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

19 (4) in paragraph (2), as so redesignated—

20 (A) by striking out “small purchase
 21 threshold” and inserting in lieu thereof “sim-
 22 plified acquisition threshold”; and

23 (B) by striking out “small purchase proce-
 24 dures” and inserting in lieu thereof “simplified
 25 procedures”; and

1 (5) in paragraph (3), as redesignated by para-
2 graph (3), by striking out “small purchase proce-
3 dures” and inserting in lieu thereof “the simplified
4 procedures”.

5 (b) SOLICITATION CONTENT REQUIREMENT.—Sec-
6 tion 2305(a)(2) of title 10, United States Code, is amend-
7 ed by striking out “small purchases)” in the matter above
8 subparagraph (A) and inserting in lieu thereof “purchases
9 not in excess of the simplified acquisition threshold”.

10 (c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A)
11 of title 10, United States Code, is amended by striking
12 out “small purchase threshold” and inserting in lieu there-
13 of “simplified acquisition threshold”.

14 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

15 (a) SIMPLIFIED ACQUISITION PROCEDURES.—

16 (1) PROPERTY AND SERVICES GENERALLY.—
17 Section 303(g) of the Federal Property and Admin-
18 istrative Services Act of 1949 (41 U.S.C. 253(g)) is
19 amended—

20 (A) in paragraph (1), by striking out
21 “small purchases of property and services” and
22 inserting in lieu thereof “purchases of property
23 and services not in excess of the simplified ac-
24 quisition threshold”;

1 (B) by striking out paragraphs (2) and
2 (5);

3 (C) in paragraph (3)—

4 (i) by striking out “small purchase
5 threshold” and inserting in lieu thereof
6 “simplified acquisition threshold”; and

7 (ii) by striking out “small purchase
8 procedures” and inserting in lieu thereof
9 “simplified procedures”;

10 (E) in paragraph (4), by striking out
11 “small purchase procedures” and inserting in
12 lieu thereof “the simplified procedures”; and

13 (F) by inserting after paragraph (1) the
14 following new paragraph (2):

15 “(2)(A) The Administrator of General Services shall
16 prescribe regulations that provide special simplified proce-
17 dures for acquisitions of leasehold interests in real prop-
18 erty at rental rates that do not exceed the simplified acqui-
19 sition threshold.

20 “(B) For purposes of subparagraph (A), the rental
21 rate or rates under a multiyear lease do not exceed the
22 simplified acquisition threshold if the average annual
23 amount of the rent payable for the period of the lease does
24 not exceed the simplified acquisition threshold.”.

1 (b) SOLICITATION CONTENT REQUIREMENT.—Sec-
 2 tion 303A(b) of the Federal Property and Administrative
 3 Services Act of 1949 (41 U.S.C. 253a(b)) is amended by
 4 striking out “small purchases)” in the matter above para-
 5 graph (1) and inserting in lieu thereof “purchases not in
 6 excess of the simplified acquisition threshold)”.

7 (c) COST TYPE CONTRACTS.—Section 304(b) of the
 8 Federal Property and Administrative Services Act of 1949
 9 (41 U.S.C. 254(b)), as amended by section 1071, is fur-
 10 ther amended in the second sentence by striking out “ei-
 11 ther \$25,000” and inserting in lieu thereof “either the
 12 simplified acquisition threshold”.

13 **SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY**
 14 **ACT.**

15 Section 19(a) of the Office of Federal Procurement
 16 Policy Act (41 U.S.C. 417(a)) is amended by striking out
 17 “procurements, other than small purchases,” and insert-
 18 ing in lieu thereof “procurements in excess of the sim-
 19 plified acquisition threshold”.

20 **SEC. 4074. SMALL BUSINESS ACT.**

21 (a) DEFINITION.—Section 3(m) of the Small Busi-
 22 ness Act (15 U.S.C. 632(m)) is amended by striking out
 23 “‘small purchase threshold’” and inserting in lieu thereof
 24 “‘simplified acquisition threshold’”.

1 (b) USE OF SIMPLIFIED ACQUISITION THRESHOLD
2 TERM.—Section 8(d)(2)(A) of the Small Business Act (15
3 U.S.C. 637(d)(2)(A)) is amended by striking out “small
4 purchase threshold” and inserting in lieu thereof “sim-
5 plified acquisition threshold”.

6 **PART V—REVISION OF REGULATIONS**

7 **SEC. 4081. REVISION REQUIRED.**

8 (a) FEDERAL ACQUISITION REGULATION.—The Fed-
9 eral Acquisition Regulatory Council established by section
10 25(a) of the Office of Federal Procurement Policy Act (41
11 U.S.C. 421(a)) shall review the Federal Acquisition Regu-
12 lation to identify regulations that are applicable to acquisi-
13 tions in excess of a specified amount that is less than
14 \$100,000. The Council shall amend the regulations so
15 identified as necessary to provide that such regulations do
16 not apply to acquisitions that are not in excess of the sim-
17 plified acquisition threshold. The preceding sentence does
18 not apply in the case of a regulation for which such an
19 amendment would not be in the national interest, as deter-
20 mined by the Council.

21 (b) SUPPLEMENTAL REGULATIONS.—The head of
22 each Federal agency that has issued regulations, policies,
23 or procedures referred to in section 25(c)(2) of the Office
24 of Federal Procurement Policy Act (41 U.S.C. 421(c)(2))
25 shall identify any such regulations, policies, or procedures

1 that are applicable to acquisitions in excess of a specified
2 amount that is less than \$100,000. The agency head shall
3 amend the regulations so identified as necessary to provide
4 that such regulations, policies, and procedures do not
5 apply to acquisitions that are not in excess of the sim-
6 plified acquisition threshold. The preceding sentence does
7 not apply in the case of a regulation, policy, or procedure
8 for which such an amendment would not be in the national
9 interest, as determined by the agency head.

10 (c) COMPLETION OF ACTIONS.—All actions under
11 this section shall be completed not later than 180 days
12 after the date of the enactment of this Act.

13 (d) DEFINITIONS.—In this section:

14 (1) The term “simplified acquisition threshold”
15 has the meaning given such term in section 4(11) of
16 the Office of Federal Procurement Policy Act (41
17 U.S.C. 403(11)), as amended by section 4001.

18 (2) The term “Federal agency” has the mean-
19 ing given such term in section 3(b) of the Federal
20 Property and Administrative Services Act of 1949
21 (41 U.S.C. 472(b)).

1 **Subtitle B—Socioeconomic and**
2 **Small Business Laws**

3 **SEC. 4101. ACQUISITIONS GENERALLY.**

4 (a) REPEAL OF EXECUTED REPORTING REQUIRE-
5 MENT.—Section 306 of the Trade Agreements Act of 1979
6 (19 U.S.C. 2516) is repealed.

7 (b) WALSH-HEALEY ACT.—

8 (1) REPEAL OTHER THAN FOR CERTAIN DEFINI-
9 TIONAL PURPOSES.—The Act of June 30, 1936
10 (41 U.S.C. 35 et seq.), commonly referred to as the
11 “Walsh-Healey Act”, is amended to read as follows:
12 “SECTION 1. (a) The Secretary of Labor may pre-
13 scribe in regulations the standards for determining wheth-
14 er a contractor is a manufacturer of or a regular dealer
15 in materials, supplies, articles, or equipment to be manu-
16 factured or used in the performance of a contract entered
17 into by any executive department, independent establish-
18 ment, or other agency or instrumentality of the United
19 States, or by the District of Columbia, or by any corpora-
20 tion all the stock of which is beneficially owned by the
21 United States, for the manufacture or furnishing of mate-
22 rials, supplies, articles, and equipment.

23 “(b) Any interested person shall have the right of ju-
24 dicial review of any legal question regarding the interpre-

1 tation of the terms ‘regular dealer’ and ‘manufacturer’,
2 as defined pursuant to subsection (a).”

3 (2) CONFORMING AMENDMENT.—Section
4 2304(h) of title 10, United States Code, is amended
5 to read as follows:

6 “(h) For the purposes of the Act entitled ‘An Act
7 relating to the rate of wages for laborers and mechanics
8 employed on public buildings of the United States and the
9 District of Columbia by contractors and subcontractors,
10 and for other purposes’, approved March 3, 1931 (com-
11 monly referred to as the ‘Davis-Bacon Act’) (40 U.S.C.
12 276a et seq.), purchases or contracts awarded after using
13 procedures other than sealed-bid procedures shall be treat-
14 ed as if they were made with sealed-bid procedures.”.

15 (c) REPEAL OF REDUNDANT REQUIREMENT RE-
16 GARDING APPLICABILITY OF THE DAVIS-BACON ACT AND
17 THE WALSH-HEALEY ACT.—Section 308 of the Federal
18 Property and Administrative Services Act of 1949 (41
19 U.S.C. 258) is repealed.

20 **SEC. 4102. ACQUISITIONS FROM SMALL BUSINESSES.**

21 (a) SET-ASIDE PRIORITY.—Section 15 of the Small
22 Business Act (15 U.S.C. 644) is amended by striking out
23 subsections (e) and (f).

1 (b) CERTIFICATE OF COMPETENCE.—Section 804 of
2 Public Law 103–484 (106 Stat. 2447; 10 U.S.C. 2305
3 note) is repealed.

4 **SEC. 4103. CONTRACTING PROGRAM FOR CERTAIN SMALL**
5 **BUSINESS CONCERNS.**

6 (a) PROCUREMENT PROCEDURES AUTHORIZED.—
7 Section 8 of the Small Business Act (15 U.S.C. 637) is
8 amended by inserting after subsection (b) the following
9 new subsection:

10 “(c)(1) To facilitate the attainment of a goal for the
11 participation of small business concerns owned and con-
12 trolled by socially and economically disadvantaged individ-
13 uals that is established for a Federal agency pursuant to
14 section 15(g)(1), the head of the agency may enter into
15 contracts using—

16 “(A) less than full and open competition by re-
17 stricting the competition for such awards to small
18 business concerns owned and controlled by socially
19 and economically disadvantaged individuals de-
20 scribed in subsection (d)(3)(C) of this section; and

21 “(B) a price evaluation preference not in excess
22 of 10 percent when evaluating an offer received from
23 such a small business concern as the result of an un-
24 restricted solicitation.

1 “(2) Paragraph (1) does not apply to the Department
2 of Defense.”.

3 (b) IMPLEMENTATION THROUGH THE FEDERAL AC-
4 QUISSION REGULATION.—

5 (1) IN GENERAL.—The Federal Acquisition
6 Regulation shall be amended to provide for uniform
7 implementation of the authority provided in section
8 8(c) of the Small Business Act, as added by sub-
9 section (a).

10 (2) MATTERS TO BE ADDRESSED.—The provi-
11 sions of the Federal Acquisition Regulation pre-
12 scribed pursuant to paragraph (1) shall include—

13 (A) conditions for the use of advance pay-
14 ments;

15 (B) provisions for contract payment terms
16 that provide for—

17 (i) accelerated payment for work per-
18 formed during the period for contract per-
19 formance; and

20 (ii) full payment for work performed;

21 (C) guidance on how contracting officers
22 may use, in solicitations for various classes of
23 products or services, a price evaluation pref-
24 erence pursuant to section 8(c)(1)(B) of the
25 Small Business Act, as added by subsection (a),

1 to provide a reasonable advantage to small busi-
2 ness concerns owned and controlled by socially
3 and economically disadvantaged individuals
4 without effectively eliminating any participation
5 of other small business concerns; and

6 (D)(i) procedures for a person to request
7 the head of Federal agency to determine wheth-
8 er the use of competitions restricted to small
9 business concerns owned and controlled by so-
10 cially and economically disadvantaged individ-
11 uals at a contracting activity of such agency
12 has caused a particular industry category to
13 bear a disproportionate share of the contracts
14 awarded to attain the goal established for that
15 contracting activity; and

16 (ii) guidance for limiting the use of such
17 restricted competitions in the case of any con-
18 tracting activity and class of contracts deter-
19 mined in accordance with such procedures to
20 have caused a particular industry category to
21 bear a disproportionate share of the contracts
22 awarded to attain the goal established for that
23 contracting activity.

1 (c) TERMINATION.—Section 8(c) of the Small Busi-
2 ness Act, as added by subsection (a), shall cease to be
3 effective at the end of September 30, 1999.

4 **SEC. 4104. PROCUREMENT GOALS FOR SMALL BUSINESS**
5 **CONCERNS OWNED BY WOMEN.**

6 (a) GOALS.—Section 15 of the Small Business Act
7 (15 U.S.C. 644) is amended—

8 (1) by striking out “and small business con-
9 cerns owned and controlled by socially and economi-
10 cally disadvantaged individuals” each place it ap-
11 pears in the first sentence and fourth sentences of
12 subsection (g)(1), the second sentence of subsection
13 (g)(2), and paragraphs (1), (2)(A), (2)(D), and
14 (2)(E) of subsection (h) and inserting in lieu thereof
15 “, small business concerns owned and controlled by
16 socially and economically disadvantaged individuals,
17 and small business concerns owned and controlled by
18 women”;

19 (2) in subsection (g)—

20 (A) by inserting after the third sentence of
21 paragraph (1) the following: “The Government-
22 wide goal for participation by small business
23 concerns owned and controlled by women shall
24 be established at not less than 5 percent of the

1 total value of all prime contract and sub-
2 contract awards for each fiscal year.”;

3 (B) in the first sentence of paragraph (2),
4 by striking out “and by small business concerns
5 owned and controlled by socially and economi-
6 cally disadvantaged individuals,” and inserting
7 in lieu thereof “, by small business concerns
8 owned and controlled by socially and economi-
9 cally disadvantaged individuals, and by small
10 business concerns owned and controlled by
11 women”; and

12 (C) in the fourth sentence of paragraph
13 (2), by inserting after “including participation
14 by small business concerns owned and con-
15 trolled by socially and economically disadvan-
16 taged individuals” the following: “and by par-
17 ticipation small business concerns owned and
18 controlled by women”; and

19 (3) in subsection (h)(2)(F), by striking out
20 “women-owned small business enterprises” and in-
21 serting in lieu thereof “small business concerns
22 owned and controlled by women”.

23 (b) SUBCONTRACT PARTICIPATION.—Section 8(d) of
24 such Act (15 U.S.C. 637(d)) is amended—

1 (1) by striking out “and small business con-
2 cerns owned and controlled by socially and economi-
3 cally disadvantaged individuals” both places it ap-
4 pears in paragraph (1), both places it appears in
5 paragraph (3)(A), in paragraph (4)(D), in subpara-
6 graphs (A), (C), and (F) of paragraph (6), and in
7 paragraph (10)(B) and inserting in lieu thereof “,
8 small business concerns owned and controlled by so-
9 cially and economically disadvantaged individuals,
10 and small business concerns owned and controlled by
11 women”;

12 (2) by striking out subparagraph (D) in para-
13 graph (3) and inserting in lieu thereof the following:

14 “(E) Contractors acting in good faith may rely
15 on written representations by their subcontractors
16 regarding their status as either a small business con-
17 cern, a small business concern owned and controlled
18 by socially and economically disadvantaged individ-
19 uals, or a small business concern owned and con-
20 trolled by women.”;

21 (3) in paragraph (3), by inserting after sub-
22 paragraph (C) the following new subparagraph (D):

23 “(D) The term ‘small business concern owned
24 and controlled by women’ shall mean a small busi-
25 ness concern—

1 “(i) which is at least 51 per centum owned
2 by one or more women; or, in the case of any
3 publicly owned business, at least 51 per centum
4 of the stock of which is owned by one or more
5 women; and

6 “(ii) whose management and daily business
7 operations are controlled by one or more
8 women.”; and

9 (4) in paragraph (4)(E), by inserting “and for
10 small business concerns owned and controlled by
11 women” after “as defined in paragraph (3) of this
12 subsection”.

13 (c) MISREPRESENTATIONS OF STATUS.—(1) Sub-
14 section (d)(1) of section 16 of such Act (15 U.S.C. 645)
15 is amended by striking out “or ‘small business concern
16 owned and controlled by socially and economically dis-
17 advantaged individuals’” and inserting in lieu thereof “,
18 a ‘small business concern owned and controlled by socially
19 and economically disadvantaged individuals’, or a ‘small
20 business concerns owned and controlled by women’”.

21 (2) Subsection (e) of such section is amended by
22 striking out “or ‘small business concern owned and con-
23 trolled by socially and economically disadvantaged individ-
24 uals’” and inserting in lieu thereof “, a ‘small business
25 concern owned and controlled by socially and economically

1 disadvantaged individuals’, or a ‘small business concerns
2 owned and controlled by women’”.

3 (d) DEFINITION.—Section 3 of such Act (15 U.S.C.
4 632) is amended by adding at the end the following new
5 subsection:

6 “(n) For the purposes of this Act, a small business
7 concern is a small business concern owned and controlled
8 by women if—

9 “(1) at least 51 percent of small business con-
10 cern is owned by one or more women or, in the case
11 of any publicly owned business, at least 51 percent
12 of the stock of which is owned by one or more
13 women; and

14 “(2) the management and daily business oper-
15 ations of the business are controlled by one or more
16 women.”.

17 **SEC. 4105. DEVELOPMENT OF DEFINITIONS REGARDING**
18 **CERTAIN SMALL BUSINESS CONCERNS.**

19 (a) REVIEW REQUIRED.—

20 (1) DEFINITIONS TO BE IDENTIFIED.—The Ad-
21 ministrator for Federal Procurement Policy shall
22 conduct a comprehensive review of Federal laws, as
23 in effect on November 1, 1994, to identify and cata-
24 logue all of the provisions in such laws that define
25 (or describe for definitional purposes) the small busi-

1 ness concerns set forth in paragraph (2) for pur-
2 poses of authorizing the participation of such small
3 business concerns as prime contractors or sub-
4 contractors in—

5 (A) contracts awarded directly by the Fed-
6 eral Government or subcontracts awarded under
7 such contracts; or

8 (B) contracts and subcontracts funded, in
9 whole or in part, by Federal financial assistance
10 under grants, cooperative agreements, or other
11 forms of Federal assistance.

12 (2) COVERED SMALL BUSINESS CONCERNS.—
13 The small business concerns referred to in para-
14 graph (1) are as follows:

15 (A) Small business concerns owned and
16 controlled by socially and economically dis-
17 advantaged individuals.

18 (B) Minority-owned small business con-
19 cerns.

20 (C) Small business concerns owned and
21 controlled by women.

22 (D) Woman-owned small business con-
23 cerns.

24 (b) MATTERS TO BE DEVELOPED.—On the basis of
25 the results of the review carried out under subsection (a),

1 the Administrator for Federal Procurement Policy shall
2 develop—

3 (1) uniform definitions for the small business
4 concerns referred to in subsection (a)(2);

5 (2) uniform agency certification standards and
6 procedures for—

7 (A) determinations of whether a small
8 business concern qualifies as a small business
9 concern referred to in subsection (a)(2) under
10 an applicable standard for purposes contracts
11 and subcontracts referred to in subsection
12 (a)(1); and

13 (B) reciprocal recognition by an agency of
14 a decision of another agency regarding whether
15 a small business concern qualifies as a small
16 business concern referred to in subsection
17 (a)(2) for such purposes; and

18 (3) such other related recommendations as the
19 Administrator determines appropriate consistent
20 with the review results.

21 (c) PROCEDURES AND SCHEDULE.—

22 (1) PARTICIPATION BY CERTAIN INTERESTED
23 PARTIES.—The Administrator for Federal Procure-
24 ment Policy shall provide for the participation in the

1 review and activities under subsections (a) and (b)
2 by representatives of—

3 (A) the Small Business Administration (in-
4 cluding the Office of the Chief Counsel for Ad-
5 vocacy);

6 (B) the Minority Business Development
7 Agency of the Department of Commerce;

8 (C) the Department of Transportation;

9 (D) the Environmental Protection Agency;
10 and

11 (E) such other executive departments and
12 agencies as the Administrator considers appro-
13 priate.

14 (2) CONSULTATION WITH CERTAIN INTERESTED
15 PARTIES.—In carrying out subsections (a) and (b),
16 the Administrator shall consult with representatives
17 of organizations representing—

18 (A) minority-owned business enterprises;

19 (B) women-owned business enterprises;
20 and

21 (C) other organizations that the Adminis-
22 trator considers appropriate.

23 (3) SCHEDULE.—Not later than 60 days after
24 the date of the enactment of this Act, the Adminis-

1 trator shall publish in the Federal Register a notice
2 which—

3 (A) lists the provisions of law identified in
4 the review carried out under subsection (a);

5 (B) describes the matters to be developed
6 on the basis of the results of the review pursu-
7 ant to subsection (b);

8 (C) solicits public comment regarding the
9 matters described in the notice pursuant to sub-
10 paragraphs (A) and (B) for a period of not less
11 than 60 days; and

12 (D) addresses such other matters as the
13 Administrator considers appropriate to ensure
14 the comprehensiveness of the review and activi-
15 ties under subsections (a) and (b).

16 (d) REPORT.—Not later than May 1, 1995, the Ad-
17 ministrator for Federal Procurement Policy shall submit
18 to the Committees on Small Business of the Senate and
19 the House of Representatives a report on the results of
20 the review carried out under subsection (a) and the actions
21 taken under subsection (b). The report shall include a dis-
22 cussion of the results of the review, a description of the
23 consultations conducted and public comments received,
24 and the Administrator's recommendations with regard to
25 the matters identified under subsection (b).

Subtitle C—Miscellaneous Acquisition Laws

SEC. 4151. PROHIBITION ON USE OF FUNDS FOR DOCUMENTING ECONOMIC OR EMPLOYMENT IMPACT OF CERTAIN ACQUISITION PROGRAMS.

(a) REVISION AND CODIFICATION.—

(1) IN GENERAL.—Subchapter I of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

“No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.”.

1 (b) REPEAL OF SUPERSEDED LAW.—Section 9048 of
2 Public Law 102–396 (106 Stat. 1913) is repealed.

3 **SEC. 4152. RESTRICTION ON USE OF NONCOMPETITIVE**
4 **PROCEDURES FOR PROCUREMENT FROM A**
5 **PARTICULAR SOURCE.**

6 (a) ARMED SERVICES ACQUISITIONS.—Section 2304
7 of title 10, United States Code, as amended by section
8 1005(b), is further amended—

9 (1) in subsection (c)(5), by inserting “subject to
10 subsection (j),” after “(5)”; and

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

13 “(j)(1) It is the policy of Congress that no legislation
14 should be enacted that requires a procurement to be made
15 from a specified non-Federal Government source.

16 “(2) A provision of law may not be construed as re-
17 quiring a procurement to be made from a specified non-
18 Federal Government source unless that provision of law—

19 “(A) specifically refers to this subsection;

20 “(B) specifically identifies the particular non-
21 Federal Government source involved; and

22 “(C) specifically states that the procurement
23 from that source is required by such provision of law
24 in contravention of the policy set forth in paragraph
25 (1).”.

1 (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303
2 of the Federal Property and Administrative Services Act
3 of 1949 (41 U.S.C. 253) is amended—

4 (1) in subsection (c)(5), by inserting “subject to
5 subsection (h),” after “(5)”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(h)(1) It is the policy of Congress that no legislation
9 should be enacted that requires a procurement to be made
10 from a specified non-Federal Government source.

11 “(2) A provision of law may not be construed as re-
12 quiring a procurement to be made from a specified non-
13 Federal Government source unless that provision of law—

14 “(A) specifically refers to this subsection;

15 “(B) specifically identifies the particular non-
16 Federal Government source involved; and

17 “(C) specifically states that the procurement
18 from that source is required by such provision of law
19 in contravention of the policy set forth in paragraph
20 (1).”.

TITLE V—ACQUISITION
MANAGEMENT
Subtitle A—Armed Services
Acquisitions

SEC. 5001. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED
MANAGEMENT OF PROGRAMS.—

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

**“§ 2219. Performance based management: acquisition
programs**

“(a) CONGRESSIONAL POLICY.—It is the policy of
Congress that—

“(1) the Department of Defense should achieve,
on average, 90 percent of the cost and schedule
goals established for the research and development
programs and acquisition programs of the Depart-
ment of Defense without reducing the performance
or capabilities of the items being acquired; and

“(2) the average period necessary for converting
an emerging technology into initial operational capa-
bility for the Department of Defense should not ex-
ceed 8 years.

1 “(b) ESTABLISHMENT OF GOALS.—(1) The Sec-
2 retary of Defense shall approve or define the cost, per-
3 formance, and schedule goals for major defense acquisition
4 programs of the Department of Defense.

5 “(2) The Comptroller of the Department of Defense
6 shall evaluate the cost goals proposed for each major de-
7 fense acquisition program of the Department.

8 “(c) IDENTIFICATION OF NONCOMPLIANT PRO-
9 GRAMS.—Whenever it is necessary to do so in order to
10 implement the policy set out in subsection (a), the Sec-
11 retary of Defense shall—

12 “(1) identify and consider whether there is a
13 continuing need for programs that are significantly
14 behind schedule, over budget, or not in compliance
15 with performance or capability requirements taking
16 into consideration—

17 “(A) the needs of the Department known
18 as of the time of consideration;

19 “(B) the state of the technology or tech-
20 nologies relevant to the programs and to the
21 needs of the Department;

22 “(C) the estimated costs and projected
23 schedules necessary for the completion of such
24 programs; and

25 “(D) other pertinent information; and

1 “(2) identify existing and potential research
2 and development programs and acquisition programs
3 that are suitable alternatives for programs consid-
4 ered pursuant to paragraph (1).

5 “(d) ANNUAL REPORTING REQUIREMENT.—The Sec-
6 retary of Defense shall include in the annual report sub-
7 mitted to Congress pursuant to section 113(c) of this title
8 an assessment of the progress made in implementing the
9 policy stated in subsection (a). The Secretary shall use
10 data from existing management systems in making the as-
11 sessment.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of such chapter is amended
14 by adding at the end the following new item:

 “2219. Performance based management: acquisition programs.”.

15 (b) ENHANCED SYSTEM OF PERFORMANCE INCEN-
16 TIVES.—Within one year after the date of the enactment
17 of this Act, the Secretary of Defense shall review the in-
18 centives and personnel actions available to the Secretary
19 for encouraging excellence in the defense acquisition
20 workforce and provide an enhanced system of incentives
21 for the encouragement of excellence in such workforce.
22 The enhanced system of incentives shall, to the maximum
23 extent consistent with applicable law—

24 (1) relate pay to performance (including the ex-
25 tent to which the performance of personnel in such

1 workforce contributes to achieving the cost goals,
2 schedule goals, and performance goals established
3 for acquisition programs of the department pursuant
4 to section 2219(b) of title 10, as added by sub-
5 section (a)); and

6 (2) provide for consideration, in personnel eval-
7 uations and promotion decisions, of the extent to
8 which the performance of personnel in such
9 workforce contributes to achieving the cost goals,
10 schedule goals, and performance goals established
11 for acquisition programs of the department pursuant
12 to section 2219(b) of title 10, United States Code,
13 as added by subsection (a).

14 (c) RECOMMENDED LEGISLATION.—Not later than
15 one year after the date of the enactment of this Act, the
16 Secretary of Defense shall submit to Congress any rec-
17 ommended legislation that the Secretary considers nec-
18 essary to carry out section 2219 of title 10, United States
19 Code, as added by subsection (a), and otherwise to facili-
20 tate and enhance management of Department of Defense
21 acquisition programs and the defense acquisition
22 workforce on the basis of performance.

1 **SEC. 5002. RESULTS ORIENTED ACQUISITION PROGRAM**
2 **CYCLE.**

3 The Secretary of Defense shall define in regulations
4 a simplified acquisition program cycle that is results-ori-
5 ented. The Secretary shall consider including in the regu-
6 lations provisions for the following:

7 (1) Program phases as follows:

8 (A) An integrated decision team meeting
9 which—

10 (i) may be requested by a potential
11 user of the system or component to be ac-
12 quired, the head of a laboratory, or a pro-
13 gram office on such bases as the emer-
14 gence of a new military requirement, cost
15 savings opportunity, or new technology op-
16 portunity;

17 (ii) is conducted by an acquisition
18 program executive officer; and

19 (iii) is usually completed within 1 to 3
20 months.

21 (B) A prototype development and testing
22 phase which—

23 (i) includes operational tests and con-
24 cerns relating to manufacturing operations
25 and life cycle support;

1 (ii) is usually completed within 6 to
2 36 months; and

3 (iii) produces sufficient numbers of
4 prototypes to assess operational utility.

5 (C) Product integration, development, and
6 testing which—

7 (i) includes full-scale development,
8 operational testing, and integration of
9 components; and

10 (ii) is usually completed within 1 to 5
11 years.

12 (D) Production, integration into existing
13 systems, or production and integration into ex-
14 isting systems.

15 (2) An acquisition program approval process for
16 major program decisions which consists of the fol-
17 lowing:

18 (A) One major decision point—

19 (i) which occurs for an acquisition
20 program before the program proceeds into
21 product integration and development; and

22 (ii) at which the Under Secretary of
23 Defense for Acquisition and Technology, in
24 consultation with the Vice Chairman of the
25 Joint Chiefs of Staff reviews the program,

1 determines whether the program should
2 continue to be carried out beyond product
3 integration and development, and decides
4 whether to commit to further development,
5 to require further prototyping, or to termi-
6 nate the program.

7 (B) Consideration of the potential benefits,
8 affordability, needs, and risks of an acquisition
9 program in the review of the acquisition pro-
10 gram.

11 **SEC. 5003. DEFENSE ACQUISITION PILOT PROGRAM DES-**
12 **IGNATIONS.**

13 (a) PROGRAMS AND WAIVERS.—The National De-
14 fense Authorization Act for Fiscal Year 1994 (Public Law
15 103–160) is amended by inserting the following new sec-
16 tion at the end of subtitle D of title VIII:

17 **“SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DES-**
18 **IGNATIONS.**

19 “(a) ELIGIBLE PROGRAMS.—The Secretary of De-
20 fense is authorized to designate the following defense ac-
21 quisition programs for participation in the defense acqui-
22 sition pilot program authorized by section 809 of the Na-
23 tional Defense Authorization Act for Fiscal Year 1991 (10
24 U.S.C. 2430 note):

1 “(1) Defense Personnel Support Center medi-
2 cal, clothing and textile, and subsistence programs
3 with respect to the following:

4 “(A) All contracts for processed fruits and
5 vegetables and frozen seafood items for both
6 depot stock and direct vendor delivery.

7 “(B) All contracts in the subsistence prime
8 vendor program for grocery items.

9 “(C) All contracts in the Mail Order Phar-
10 macy Program, the prime vendor programs for
11 pharmaceuticals and for medical surgical items
12 for delivery to military hospitals.

13 “(D) All contracts in the medical electronic
14 commerce program for acquisition for depot
15 stock and direct vendor delivery.

16 “(E) All contracts for the following items:
17 dress coats (small lots), dress coats, duffel
18 bags, Navy work clothing, general purpose
19 tents, suitcases, gloves for electrical workers,
20 boot flyers, socks, drawers, undershirts, and
21 items offered under the Broad Agency An-
22 nouncements for Clothing and Textiles Ad-
23 vanced Business Practices Demonstration Pro-
24 gram.

1 “(2) The Fire Support Combined Arms Tactical
2 Trainer program with respect to all contracts di-
3 rectly related to the procurement of a training sys-
4 tem (including related hardware, software, and sub-
5 systems) to perform collective training of field artil-
6 lery gunnery team components with development of
7 software as required to generate the training exer-
8 cises and component interfaces.

9 “(3) The Joint Direct Attack Munition pro-
10 gram (JDAM I) with respect to all contracts directly
11 related to the development and procurement of a
12 strap-on guidance kit, using an inertially guided,
13 Global Positioning System updated guidance kit for
14 inventory 1,000 and 2,000 pound bombs.

15 “(4) The Joint Primary Aircraft Training Sys-
16 tem (JPATS) with respect to all contracts directly
17 related to the acquisition of a new primary trainer
18 aircraft to fulfill Air Force and Navy joint under-
19 graduate aviation training requirements, and an as-
20 sociated ground-based training system consisting of
21 air crew training devices (simulators), courseware, a
22 Training Management System, and contractor sup-
23 port for the life of the system.

24 “(5) The Commercial Derivatives Aircraft pro-
25 gram with respect to all contracts directly related to

1 the acquisition or upgrading of civil-derivative air-
2 craft for use in (A) foreign military sales of Airborne
3 Warning and Control Systems to foreign govern-
4 ments with modifications of a type customarily pro-
5 vided to commercial customers, or (B) future Air
6 Force airlift and tanker requirements.

7 “(6) The Commercial Derivative Engine pro-
8 gram with respect to all contracts directly related to
9 the acquisition of (A) commercially derived engines
10 (including spare engines), logistics support equip-
11 ment, technical orders, management data, and initial
12 spare parts for use in the C-17A production line,
13 and (B) commercially derived engines to support the
14 purchase of commercial-derivative aircraft to meet
15 future Air Force airlift and tanker requirements, in-
16 cluding engine replacement and upgrades.

17 “(b) WAIVER AUTHORITY.—Subject to section 809(c)
18 of the National Defense Authorization Act for Fiscal Year
19 1991, the Secretary of Defense is authorized—

20 “(1) to apply any amendment or repeal of a
21 provision of law made in the Federal Acquisition
22 Streamlining Act of 1994 to the programs described
23 in subsection (a) before the effective date of such
24 amendment or repeal; and

1 “(2) to apply to a procurement of noncommer-
2 cial items under such programs—

3 “(A) any authority provided in such Act
4 (or in an amendment made by a provision of
5 such Act) to waive a provision of law in the
6 case of commercial items, and

7 “(B) any exception applicable under such
8 Act (or an amendment made by a provision of
9 such Act) in the case of commercial items,
10 before the effective date of such provision (or
11 amendment) to the extent that the Secretary deter-
12 mines necessary to test the application of such waiv-
13 er or exception to procurements of noncommercial
14 items.

15 “(c) PILOT PROGRAM IMPLEMENTATION.—In exer-
16 cising the authority provided in section 809 of the Na-
17 tional Defense Authorization Act for 1991, and in accord-
18 ance with sections 833 through 839 of this Act, the Sec-
19 retary of Defense, shall take the following actions:

20 “(1) MISSION-ORIENTED PROGRAM MANAGE-
21 MENT.—For one or more of the defense acquisition
22 programs designated for participation in the defense
23 acquisition pilot program, prescribe and implement
24 procedures which—

1 “(A) provide for interaction between the
2 program manager and the commander of the
3 operational command responsible for the re-
4 quirement for the equipment acquired;

5 “(B) include provisions for a determination
6 by the commander that items proposed for pro-
7 curement fulfill the need defined in approved
8 requirements documents; and

9 “(C) may include a role for the operational
10 commander in decision making for program
11 milestone decisions and performance of accept-
12 ance testing of items acquired.

13 “(2) SAVINGS OBJECTIVES.—Not later than 45
14 days after the date of enactment of the Federal Ac-
15 quisition Streamlining Act of 1994, identify for each
16 defense acquisition program participating in the
17 pilot program quantitative measures and goals for
18 reducing acquisition management costs.

19 “(3) PROGRAM PHASES.—For each defense ac-
20 quisition program participating in the pilot program,
21 incorporate in an approved acquisition strategy a
22 program review process that provides senior acquisi-
23 tion officials with reports that—

24 “(A) contain essential information on pro-
25 gram results at quarterly intervals;

1 “(B) reduce data requirements from the
2 current major program review reporting re-
3 quirements; and

4 “(C) include data on program costs esti-
5 mates, actual expenditures, performance esti-
6 mates, performance data from tests, and, con-
7 sistent with existing statutes, the minimum nec-
8 essary other data items required to ensure the
9 appropriate expenditure of funds appropriated
10 for that program.

11 “(4) PROGRAM WORK FORCE POLICIES.—With
12 regard to the review of incentives and personnel ac-
13 tions required under section 836 of this Act—

14 “(A) not later than 60 days after the date
15 of the enactment of the Federal Acquisition
16 Streamlining Act of 1994—

17 “(i) complete the review; and

18 “(ii) on the basis of the review, define
19 one or more systems that relate incentives,
20 including pay, to achievement of budgets,
21 schedules, and performance requirements;

22 “(B) not later than 120 days after the
23 date of the enactment of the Federal Acquisi-
24 tion Streamlining Act of 1994—

1 “(i) apply such a system of incentives
2 to not less than one defense acquisition
3 program participating in the pilot pro-
4 gram; and

5 “(ii) provide for an assessment of the
6 effectiveness of that system; and

7 “(C) incorporate the results of actions
8 taken pursuant to this paragraph into the de-
9 velopment of regulations for the implementation
10 of section 5001(b) of the Federal Acquisition
11 Streamlining Act of 1994.

12 “(5) EFFICIENT CONTRACTING PROCESS.—
13 Take any additional actions that the Secretary con-
14 siders necessary to waive regulations, not required
15 by statute, that affect the efficiency of the contract-
16 ing process, including, in the Secretary’s discretion,
17 defining alternative techniques to reduce reliance on
18 military specifications and standards in contracts for
19 the defense acquisition programs participating in the
20 pilot program.

21 “(6) CONTRACT ADMINISTRATION: PERFORM-
22 ANCE BASED CONTRACT MANAGEMENT.—For at
23 least one participating defense acquisition program
24 for which a determination is made to make pay-
25 ments for work in progress under the authority of

1 section 2307 of title 10, United States Code, define
2 payment milestones on the basis of quantitative
3 measures of results.

4 “(7) CONTRACTOR PERFORMANCE ASSESS-
5 MENT.—Collect and evaluate performance informa-
6 tion on each contract entered into for a defense ac-
7 quisition program participating in the pilot program,
8 including information on cost, schedule, and tech-
9 nical performance for each contractor supporting a
10 participating program.

11 “(d) APPLICABILITY.—(1) Subsection (b) applies
12 with respect to—

13 “(A) a contract that is awarded or modified
14 during the period described in paragraph (2); and

15 “(B) a contract that is awarded before the be-
16 ginning of such period and is to be performed (or
17 may be performed), in whole or in part, during such
18 period.

19 “(2) The period referred to in paragraph (1) is the
20 period that begins 45 days after the date of the enactment
21 of the Federal Acquisition Streamlining Act of 1994 and
22 ends on September 30, 1998.”.

23 (b) RULE OF CONSTRUCTION.—Nothing in section
24 840 of the National Defense Authorization Act for Fiscal
25 Year 1994, as added by subsection (a), shall be construed

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6

8 (a) POLICY AND GOALS FOR PERFORMANCE BASED
9 MANAGEMENT OF PROGRAMS.—

(1) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 301 et seq.), as amended by sections 1552 and 1553, is further amended by adding at the end the following new section:

15 “PERFORMANCE BASED MANAGEMENT: ACQUISITION
16 PROGRAMS

17 “SEC. 311. (a) CONGRESSIONAL POLICY.—It is the
18 policy of Congress that the head of each executive agency
19 should achieve, on average, 90 percent of the cost and
20 schedule goals established for the research and develop-
21 ment programs and acquisition programs of the agency
22 without reducing the performance or capabilities of the
23 items being acquired.

24 “(b) ESTABLISHMENT OF GOALS.—(1) The head of
25 each executive agency shall approve or define the cost, per-

1 formance, and schedule goals for major acquisition pro-
2 grams of the agency.

3 “(2) The chief financial officer of an executive agency
4 shall evaluate the cost goals proposed for each major de-
5 fense acquisition program of the agency.

6 “(c) IDENTIFICATION OF NONCOMPLIANT PRO-
7 GRAMS.—Whenever it is necessary to do so in order to
8 implement the policy set out in subsection (a), the head
9 of an executive agency shall—

10 “(1) identify and consider whether there is a
11 continuing need for programs that are significantly
12 behind schedule, over budget, or not in compliance
13 with performance or capability requirements taking
14 into consideration—

15 “(A) the needs of the agency known as of
16 the time of consideration;

17 “(B) the state of the technology or tech-
18 nologies relevant to the programs and to the
19 needs of the agency;

20 “(C) the estimated costs and projected
21 schedules necessary for the completion of such
22 programs; and

23 “(D) other pertinent information; and

24 “(2) identify existing and potential research
25 and development programs and acquisition programs

1 that are suitable alternatives for programs consid-
2 ered pursuant to paragraph (1).”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in the first section of such Act, as amended by
5 sections 1552 and 1553, is further amended by in-
6 serting after the item relating to section 310 the fol-
7 lowing new item:

“Sec. 311. Performance based management: acquisition programs.”.

8 (b) ANNUAL REPORTING REQUIREMENT.—Section 6
9 of the Office of Federal Procurement Policy Act (41
10 U.S.C. 405), as amended by section 1091, is further
11 amended by adding at the end the following new sub-
12 section:

13 “(k) The Administrator shall submit to Congress, on
14 an annual basis, an assessment of the progress made in
15 executive agencies in implementing the policy stated in
16 section 311(a) of the Federal Property and Administrative
17 Services Act of 1949. The Administrator shall use data
18 from existing management systems in making the assess-
19 ment.”.

20 (c) ENHANCED SYSTEM OF PERFORMANCE INCEN-
21 TIVES.—Within one year after the date of the enactment
22 of this Act, the Administrator for Federal Procurement
23 Policy, in consultation with appropriate officials in other
24 departments and agencies of the Federal Government,

1 shall, to the maximum extent consistent with applicable
2 law—

3 (1) establish policies and procedures for the
4 heads of such departments and agencies to designate
5 acquisition positions and manage employees (includ-
6 ing the accession, education, training and career de-
7 velopment of employees) in the designated acquisi-
8 tion positions;

9 (2) extend to the acquisition workforce of the
10 entire executive branch the acquisition workforce
11 policies contained in chapter 87 of title 10, United
12 States Code, relating to the acquisition workforce of
13 the Department of Defense; and

14 (3) review the incentives and personnel actions
15 available to the heads of department and agencies of
16 the Federal Government for encouraging excellence
17 in the acquisition workforce of the Federal Govern-
18 ment and provide an enhanced system of incentives
19 for the encouragement of excellence in such
20 workforce which—

21 (A) relates pay to performance (including
22 the extent to which the performance of person-
23 nel in such workforce contributes to achieving
24 the cost goals, schedule goals, and performance
25 goals established for acquisition programs pur-

1 suant to section 311(b) of the Federal Property
2 and Administrative Services Act of 1949, as
3 added by subsection (a)); and

4 (B) provides for consideration, in personnel
5 evaluations and promotion decisions, of the ex-
6 tent to which the performance of personnel in
7 such workforce contributes to achieving such
8 cost goals, schedule goals, and performance
9 goals.

10 (d) RECOMMENDED LEGISLATION.—Not later than
11 one year after the date of the enactment of this Act, the
12 Administrator for Federal Procurement Policy shall sub-
13 mit to Congress any recommended legislation that the Sec-
14 retary considers necessary to carry out section 311 of the
15 Federal Property and Administrative Services Act of
16 1949, as added by subsection (a), and otherwise to facili-
17 tate and enhance management of Federal Government ac-
18 quisition programs and the acquisition workforce of the
19 Federal Government on the basis of performance.

20 **SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.**

21 (a) DEVELOPMENT OF PROCESS REQUIRED.—The
22 Administrator for Federal Procurement Policy, in con-
23 sultation with the heads of appropriate Federal agencies,
24 shall develop a results-oriented acquisition process for im-
25 plementation by agencies in acquisitions of property and

1 services by the Federal agencies. The process shall include
 2 the identification of quantitative measures and standards
 3 for determining the extent to which an acquisition of non-
 4 commercial items by a Federal agency satisfies the needs
 5 for which the items are being acquired.

6 (b) INAPPLICABILITY OF PROCESS TO DEPARTMENT
 7 OF DEFENSE.—The process developed pursuant to sub-
 8 section (a) may not be applied to the Department of De-
 9 fense.

10 **Subtitle C—Miscellaneous**

11 **SEC. 5091. CONTRACTOR EXCEPTIONAL PERFORMANCE** 12 **AWARDS.**

13 The Office of Federal Procurement Policy Act, as
 14 amended by section 4021, is further amended by adding
 15 at the end the following:

16 “CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS

17 “SEC. 31. (a) ESTABLISHMENT.—There is hereby es-
 18 tablished an executive branch program to recognize and
 19 promote exceptional contract performance by Federal Gov-
 20 ernment contractors.

21 “(b) SELECTION.—(1) The Administrator shall en-
 22 sure the establishment of criteria for selection of contrac-
 23 tors to receive exceptional performance awards under the
 24 program.

1 “(2) The head of an executive agency may select one
2 or more agency contractors to receive an exceptional per-
3 formance award under the program.

4 “(c) AWARD CEREMONY.—The Vice President, or the
5 head of the executive agency selecting a contractor for an
6 exceptional performance award, shall present the award
7 to the contractor with such ceremony as the Vice Presi-
8 dent or head of the agency, as the case may be, considers
9 appropriate.”.

10 **SEC. 5092. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**
11 **TELLECTUAL PROPERTY RIGHTS.**

12 Section 2386 of title 10, United States Code, is
13 amended by striking out paragraphs (3) and (4) and in-
14 serting in lieu thereof the following:

15 “(3) Technical data and computer software.

16 “(4) Releases for past infringement of patents
17 or copyrights or for unauthorized use of technical
18 data or computer software.”.

1 **TITLE VI—STANDARDS OF**
2 **CONDUCT**
3 **Subtitle A—Ethics Provisions**

4 **SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PRO-**
5 **CUREMENT POLICY ACT.**

6 (a) **RECUSAL.**—Subsection (c) of section 27 of the
7 Office of Federal Procurement Policy Act (41 U.S.C. 423)
8 is amended—

9 (1) in paragraph (1)—

10 (A) in the matter above subparagraph (A),
11 by inserting “only” after “subsection (b)(1)”;
12 and

13 (B) in subparagraph (A), by inserting
14 “(including the modification or extension of a
15 contract)” after “any procurement”;

16 (2) by striking out paragraphs (2) and (3) and
17 inserting in lieu thereof:

18 “(2) Whenever the head of a procuring activity ap-
19 proves a recusal under paragraph (1), a copy of the
20 recusal request and the approval of the request shall be
21 retained by such official for a period (not less than five
22 years) specified in regulations prescribed in accordance
23 with subsection (o).

24 “(3)(A) Except as provided in subparagraph (B), all
25 recusal requests and approvals of recusal requests pursu-

1 ant to this subsection shall be made available to the public
2 on request.

3 “(B) Any part of a recusal request or an approval
4 of a recusal request that is exempt from the disclosure
5 requirements of section 552 of title 5, United States Code,
6 under subsection (b)(1) of such section may be withheld
7 from disclosure to the public otherwise required under
8 subparagraph (A).”; and

9 (3) in paragraph (4), by striking out “compet-
10 ing contractor” and inserting in lieu thereof “per-
11 son”.

12 (b) APPLICABILITY OF CERTIFICATION REQUIRE-
13 MENT.—Subsection (e)(7)(A) of such section is amended
14 by adding at the end the following: “However, paragraph
15 (1)(B) does not apply with respect to a contract for less
16 than \$500,000.”.

17 (c) RESTRICTIONS RESULTING FROM PROCUREMENT
18 ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection
19 (f) of such section is amended—

20 (1) by redesignating paragraph (3) as para-
21 graph (4); and

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

24 “(1) No individual who, in the year prior to separa-
25 tion from service as an officer or employee of the Govern-

1 ment or an officer of the uniformed services in a covered
2 position, participated personally and substantially in ac-
3 quisition functions related to a contract, subcontract, or
4 claim of \$500,000 or more and—

5 “(A) engaged in repeated direct contact with
6 the contractor or subcontractor on matters relating
7 to such contract, subcontract, or claim; or

8 “(B) exercised significant ongoing decisionmak-
9 ing responsibility with respect to the contractor or
10 subcontractor on matters relating to such contract,
11 subcontract, or claim,

12 shall knowingly accept or continue employment with such
13 contractor or subcontractor for a period of 1 year follow-
14 ing the individual’s separation from service, except that
15 such individual may accept or continue employment with
16 any division or affiliate of such contractor or subcontrac-
17 tor that does not produce the same or similar products
18 as the entity involved in the negotiation or performance
19 of the contract or subcontract or the adjustment of the
20 claim.

21 “(2) No contractor or subcontractor, or any officer,
22 employee, agent, or consultant of such contractor or sub-
23 contractor shall knowingly offer, provide, or continue any
24 employment for another person, if such contractor, sub-
25 contractor, officer, employee, agent, or consultant knows

1 or should know that the acceptance of such employment
2 is or would be in violation of paragraph (1).

3 “(3) The head of each Federal agency shall designate
4 in writing as a ‘covered position’ under this section each
5 of the following positions in that agency:

6 “(A) The position of source selection authority,
7 member of a source selection evaluation board, or
8 chief of a financial or technical evaluation team, or
9 any other position, if the officer or employee in that
10 position is likely personally to exercise substantial
11 responsibility for ongoing discretionary functions in
12 the evaluation of proposals or the selection of a
13 source for a contract in excess of \$500,000.

14 “(B) The position of procuring contracting offi-
15 cer, or any other position, if the officer or employee
16 in that position is likely personally to exercise sub-
17 stantial responsibility for ongoing discretionary func-
18 tions in the negotiation of a contract in excess of
19 \$500,000 or the negotiation or settlement of a claim
20 in excess of \$500,000.

21 “(C) The position of program executive officer,
22 program manager, or deputy program manager, or
23 any other position, if the officer or employee in that
24 position is likely personally to exercise similar sub-
25 stantial responsibility for ongoing discretionary func-

1 tions in the management or administration of a con-
2 tract in excess of \$500,000.

3 “(D) The position of administrative contracting
4 officer, the position of an officer or employee as-
5 signed on a permanent basis to a Government Plant
6 Representative’s Office, the position of auditor, a
7 quality assurance position, or any other position, if
8 the officer or employee in that position is likely per-
9 sonally to exercise substantial responsibility for on-
10 going discretionary functions in the on-site oversight
11 of a contractor’s operations with respect to a con-
12 tract in excess of \$500,000.

13 “(E) A position in which the incumbent is likely
14 personally to exercise substantial responsibility for
15 ongoing discretionary functions in operational or de-
16 velopmental testing activities involving repeated di-
17 rect contact with a contractor regarding a contract
18 in excess of \$500,000.”.

19 (d) DISCLOSURE OF PROPRIETARY OR SOURCE SE-
20 LECTION INFORMATION TO UNAUTHORIZED PERSONS.—
21 Subsection (l) of such section is amended—

22 (1) by inserting “who are likely to be involved
23 in contracts, modifications, or extensions in excess of
24 \$25,000” in the first sentence after “its procure-
25 ment officials”; and

1 (2) by striking out “(e)” each place it appears
2 and inserting in each such place “(f)”.

3 (e) RULES OF CONSTRUCTION.—Subsection (n) of
4 such section is amended to read as follows:

5 “(n) RULES OF CONSTRUCTION.—Nothing in this
6 section shall be construed to—

7 “(1) authorize the withholding of any informa-
8 tion from the Congress, any committee or sub-
9 committee thereof, a Federal agency, any board of
10 contract appeals of a Federal agency, the Comptrol-
11 ler General, or an inspector general of a Federal
12 agency;

13 “(2) restrict the disclosure of information to, or
14 receipt of information by, any person or class of per-
15 sons authorized, in accordance with applicable agen-
16 cy regulations or procedures, to receive that infor-
17 mation;

18 “(3) restrict a contractor from disclosing its
19 own proprietary information or the recipient of in-
20 formation so disclosed by a contractor from receiving
21 such information; or

22 “(4) restrict the disclosure or receipt of infor-
23 mation relating to a Federal agency procurement
24 that has been canceled by the agency and that the

1 contracting officer concerned determines in writing
2 is not likely to be resumed.”.

3 (f) TERM TO BE DEFINED IN REGULATIONS.—Sub-
4 section (o)(2)(A) of such section is amended—

5 (1) by inserting “money, gratuity, or other” be-
6 fore “thing of value’ ”; and

7 (2) by inserting before the semicolon “and such
8 other exceptions as may be adopted on a Govern-
9 mentwide basis under section 7353 of title 5, United
10 States Code”.

11 (g) TERMS DEFINED IN LAW.—Subsection (p) of
12 such section is amended—

13 (1) in paragraph (1) by striking out “clauses
14 (i)–(viii)” and inserting in lieu thereof “clauses (i)
15 through (vii)”;

16 (2) in paragraph (3)—

17 (A) in subparagraph (A)—

18 (i) by striking out clause (i);

19 (ii) by redesignating clauses (ii), (iii),
20 (iv), (v), (vi), (vii), and (viii) as clauses (i),
21 (ii), (iii), (iv), (v), (vi), and (vii), respec-
22 tively; and

23 (iii) in clause (i) (as redesignated by
24 subclause (II) of this clause), by striking
25 out “review and approval of a specifica-

1 tion” and inserting in lieu thereof “ap-
2 proval or issuance of a specification, acqui-
3 sition plan, procurement request, or req-
4 uisition”; and

5 (B) in subparagraph (B), by striking out
6 all after “includes” and inserting in lieu thereof
7 the following: “any individual acting on behalf
8 of, or providing advice to, the agency with re-
9 spect to any phase of the agency procurement
10 concerned, regardless of whether such individ-
11 ual is a consultant, expert, or adviser, or an of-
12 ficer or employee of a contractor or subcontract-
13 tor (other than a competing contractor).”; and

14 (3) in paragraph (6)(A), by inserting
15 “nonpublic” before “information”.

16 **SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES**
17 **CODE.**

18 Section 208(a) of title 18, United States Code, is
19 amended—

20 (1) by inserting “(1)” before “Except as per-
21 mitted”; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(2) Whoever knowingly aids, abets, counsels, com-
25 mands, induces, or procures conduct prohibited by this

1 section shall be subject to the penalties set forth in section
2 216 of this title.”.

3 **SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

4 (a) REPEAL.—The following provisions of law are re-
5 pealed:

6 (1) Sections 2207, 2397, 2397a, 2397b, and
7 2397c of title 10, United States Code.

8 (2) Section 281 of title 18, United States Code.

9 (3) Section 801 of title 37, United States Code.

10 (4) Part A of title VI of the Department of En-
11 ergy Organization Act (42 U.S.C. 7211 through
12 7218).

13 (b) CLERICAL AMENDMENTS.—

14 (1) TITLE 10.—Part IV of subtitle A of title 10,
15 United States Code, is amended—

16 (A) in the table of sections at the begin-
17 ning of chapter 131, by striking out the item
18 relating to section 2207; and

19 (B) in the table of sections for chapter
20 141, by striking out the items relating to sec-
21 tions 2397, 2397a, 2397b, and 2397c.

22 (2) TITLE 18.—The table of sections for chap-
23 ter 15 of title 18, United States Code, is amended
24 by striking out the item relating to section 281.

1 (3) TITLE 37.—The table of sections for chap-
2 ter 15 of title 37, United States Code, is amended
3 by striking out the item relating to section 801.

4 (4) DEPARTMENT OF ENERGY ORGANIZATION
5 ACT.—The table of contents for the Department of
6 Energy Organization Act is amended by striking out
7 the matter relating to part A of title VI.

8 **SEC. 6004. IMPLEMENTATION.**

9 (a) REGULATIONS.—Not later than 180 days after
10 the date of the enactment of this Act, regulations imple-
11 menting the amendments made by section 6001 to section
12 27 of the Office of Federal Procurement Policy Act (41
13 U.S.C. 423), including definitions of the terms used in
14 subsection (f) of such section, shall be issued in accord-
15 ance with sections 6 and 25 of such Act (41 U.S.C. 405
16 and 521) after coordination with the Director of the Office
17 of Government Ethics.

18 (b) SAVINGS PROVISIONS.—

19 (1) CONTRACTOR CERTIFICATIONS.—No officer,
20 employee, agent, representative, or consultant of a
21 contractor who has signed a certification under sec-
22 tion 27(e)(1)(B) of the Office of Federal Procure-
23 ment Policy Act (41 U.S.C. 423(e)(1)(B)) before the
24 effective date of this Act shall be required to sign a

1 new certification as a result of the enactment of this
2 Act.

3 (2) FEDERAL PROCUREMENT OFFICIAL CER-
4 TIFICATIONS.—No procurement official of a Federal
5 agency who has signed a certification under section
6 27(l) of the Office of Federal Procurement Policy
7 Act (41 U.S.C. 423(l)) before the date of enactment
8 of this Act shall be required to sign a new certifi-
9 cation as a result of the enactment of this Act.

10 (c) INSPECTOR GENERAL REPORTS.—Not later than
11 May 31 of each of the years 1995 through 1998, the In-
12 spector General of each Federal agency (or, in the case
13 of a Federal agency that does not have an Inspector Gen-
14 eral, the head of such agency) shall submit to Congress
15 a report on the compliance by the agency during the pre-
16 ceding year with the requirement for the head of the agen-
17 cy to designate covered procurement positions under sec-
18 tion 27(f)(3) of the Office of Federal Procurement Policy
19 Act (as added by section 6001(c)).

20 **Subtitle B—Additional** 21 **Amendments**

22 **SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FED-** 23 **ERAL PERSONNEL.**

24 (a) AMENDMENT OF OFPP ACT.—The Office of Fed-
25 eral Procurement Policy Act, as amended by section 1092,

1 is further amended by inserting after section 22 the fol-
2 lowing new section 23:

3 “CONTRACTING FUNCTIONS PERFORMED BY FEDERAL
4 PERSONNEL

5 “SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVI-
6 SORY AND ASSISTANCE SERVICES.—(1) No person who is
7 not a person described in subsection (b) may be paid by
8 an agency for services to conduct evaluations or analyses
9 of any aspect of a proposal submitted for an acquisition
10 unless personnel described in subsection (b) with adequate
11 training and capabilities to perform such evaluations and
12 analyses are not readily available within the agency or an-
13 other Federal agency, as determined in accordance with
14 standards and procedures prescribed in the Federal Acqui-
15 sition Regulation.

16 “(2) In the administration of this subsection, the
17 head of each agency shall determine in accordance with
18 the standards and procedures set forth in the Federal Ac-
19 quisition Regulation whether—

20 “(A) a sufficient number of personnel described
21 in subsection (b) within the agency or another Fed-
22 eral agency are readily available to perform a par-
23 ticular evaluation or analysis for the agency head
24 making the determination; and

1 “(B) the readily available personnel have the
2 training and capabilities necessary to perform the
3 evaluation or analysis.

4 “(b) COVERED PERSONNEL.—For purposes of sub-
5 section (a), the personnel described in this subsection are
6 as follows:

7 “(1) An employee, as defined in section 2105 of
8 title 5, United States Code.

9 “(2) A member of the Armed Forces of the
10 United States.

11 “(3) A person assigned to a Federal agency
12 pursuant to subchapter VI of chapter 33 of title 5,
13 United States Code.

14 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion is intended to affect the relationship between the Fed-
16 eral Government and a federally funded research and de-
17 velopment center.”.

18 (b) REQUIREMENT FOR GUIDANCE AND REGULA-
19 TIONS.—Not later than 90 days after the date of the en-
20 actment of this Act, the Federal Acquisition Regulatory
21 Council established by section 25(a) of the Office of Fed-
22 eral Procurement Policy Act (41 U.S.C. 421(a)) shall—

23 (1) review part 37 of title 48 of the Code of
24 Federal Regulations as it relates to the use of advi-
25 sory and assistance services; and

1 (2) provide guidance and promulgate regula-
2 tions regarding—

3 (A) what actions Federal agencies are re-
4 quired to take to determine whether expertise is
5 readily available within the Federal Government
6 before contracting for advisory and technical
7 services to conduct acquisitions; and

8 (B) the manner in which personnel with
9 expertise may be shared with agencies needing
10 expertise for such acquisitions.

11 **SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR**
12 **STUDY AND REPORT.**

13 Section 17 of the Office of Federal Procurement Pol-
14 icy Act (41 U.S.C. 415) is repealed.

15 **SEC. 6053. INTERESTS OF MEMBERS OF CONGRESS.**

16 Section 3741 of the Revised Statutes (41 U.S.C. 22)
17 is amended to read as follows:

18 “No member of Congress shall be admitted to any
19 share or part of any contract or agreement made, entered
20 into, or accepted by or on behalf of the United States,
21 or to any benefit to arise thereupon.”.

1 **SEC. 6054. WAITING PERIOD FOR SIGNIFICANT CHANGES**

2 **PROPOSED FOR ACQUISITION REGULATIONS.**

3 (a) **INCREASED PERIOD.**—Section 22(a) of the Office
4 of Federal Procurement Policy Act (41 U.S.C. 418b) is
5 amended—

6 (1) by striking out “30 days” and inserting in
7 lieu thereof “60 days”; and

8 (2) by adding at the end the following: “Not-
9 withstanding the preceding sentence, such a policy,
10 regulation, procedure, or form may take effect ear-
11 lier than 60 days after the publication date when
12 there are compelling circumstances for the earlier
13 effective date, but in no event may that effective
14 date be less than 30 days after the publication
15 date.”.

16 (b) **TECHNICAL AMENDMENT.**—Section 22(d) of such
17 Act is amended by designating the second sentence as
18 paragraph (3).

19 **Subtitle C—Whistleblower**
20 **Protection**

21 **SEC. 6101. ARMED SERVICES PROCUREMENTS.**

22 (a) **WHISTLEBLOWER PROTECTIONS FOR CONTRAC-**
23 **TOR EMPLOYEES.**—Section 2409 of title 10, United
24 States Code, is amended—

25 (1) by striking out subsection (d);

1 (2) by redesignating subsection (c) as sub-
2 section (d); and

3 (3) by inserting after subsection (b) the follow-
4 ing new subsection (c):

5 “(C) REMEDY AND ENFORCEMENT AUTHORITY.—(1)
6 If the Secretary of Defense determines that a defense con-
7 tractor has subjected a person to a reprisal prohibited by
8 subsection (a), the Secretary may take one or more of the
9 following actions:

10 “(A) Order the defense contractor to take af-
11 firmative action to abate the reprisal.

12 “(B) Order the defense contractor to reinstate
13 the person to the position that the person held be-
14 fore the reprisal, together with the compensation (in-
15 cluding back pay), employment benefits, and other
16 terms and conditions of employment that would
17 apply to the person in that position if the reprisal
18 had not been taken.

19 “(C) Order the defense contractor to pay the
20 complainant an amount equal to the aggregate
21 amount of all costs and expenses (including attor-
22 ney’s fees and expert witnesses’ fees) that were rea-
23 sonably incurred by the complainant for, or in con-
24 nection with, bringing the complaint regarding the
25 reprisal, as determined by the Secretary.

1 “(2) Whenever a person fails to comply with an order
2 issued under paragraph (1), the Secretary shall file an ac-
3 tion for enforcement of such order in the United States
4 district court for a district in which the reprisal was found
5 to have occurred. In any action brought under this para-
6 graph, the court may grant appropriate relief, including
7 injunctive relief and compensatory and exemplary dam-
8 ages.

9 “(3) Any person adversely affected or aggrieved by
10 an order issued under paragraph (1) may obtain review
11 of the order’s conformance with this subsection, and any
12 regulations issued to carry out this section, in the United
13 States court of appeals for a circuit in which the reprisal
14 is alleged in the order to have occurred. No petition seek-
15 ing such review may be filed more than 60 days after issu-
16 ance of the Secretary’s order. Review shall conform to
17 chapter 7 of title 5.”.

18 (b) RELATED LAW.—

19 (1) REPEAL.—Section 2409a of title 10, United
20 States Code, is repealed.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 141 of such title
23 is amended by striking out the item relating to sec-
24 tion 2409a.

1 **SEC. 6102. GOVERNMENTWIDE WHISTLEBLOWER PROTEC-**
2 **TIONS FOR CONTRACTOR EMPLOYEES.**

3 The Office of Federal Procurement Policy Act (41
4 U.S.C. 401 et seq.), as amended by section 5091, is fur-
5 ther amended by adding at the end the following new sec-
6 tion:

7 “CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL
8 FOR DISCLOSURE OF CERTAIN INFORMATION

9 “SEC. 32. (a) PROHIBITION OF REPRISALS.—An em-
10 ployee of an executive agency contractor may not be dis-
11 charged, demoted, or otherwise discriminated against as
12 a reprisal for disclosing to a Member of Congress or an
13 authorized official of the agency or the Department of
14 Justice information relating to a substantial violation of
15 law related to an agency contract (including the competi-
16 tion for or negotiation of an agency contract).

17 “(b) INVESTIGATION OF COMPLAINTS.—A person
18 who believes that the person has been subjected to a re-
19 prisal prohibited by subsection (a) may submit a complaint
20 to the Inspector General of the executive agency. Unless
21 the Inspector General determines that the complaint is
22 frivolous, the Inspector General shall investigate the com-
23 plaint and, upon completion of such investigation, submit
24 a report of the findings of the investigation to the person,
25 the contractor concerned, and the head of the agency. In
26 the case of an executive agency that does not have an in-

1 spector general, the duties of the inspector general under
2 this section shall be performed by an official designated
3 by the agency head.

4 “(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1)
5 If the head of an executive agency determines that an
6 agency contractor has subjected a person to a reprisal pro-
7 hibited by subsection (a), the agency head may take one
8 or more of the following actions:

9 “(A) Order the contractor to take affirmative
10 action to abate the reprisal.

11 “(B) Order the contractor to reinstate the per-
12 son to the position that the person held before the
13 reprisal, together with the compensation (including
14 back pay), employment benefits, and other terms
15 and conditions of employment that would apply to
16 the person in that position if the reprisal had not
17 been taken.

18 “(C) Order the contractor to pay the complain-
19 ant an amount equal to the aggregate amount of all
20 costs and expenses (including attorney’s fees and ex-
21 pert witnesses’ fees) that were reasonably incurred
22 by the complainant for, or in connection with, bring-
23 ing the complaint regarding the reprisal, as deter-
24 mined by the Secretary.

1 “(2) Whenever a person fails to comply with an order
2 issued under paragraph (1), the agency head shall file an
3 action for enforcement of such order in the United States
4 district court for a district in which the reprisal was found
5 to have occurred. In any action brought under this para-
6 graph, the court may grant appropriate relief, including
7 injunctive relief and compensatory and exemplary dam-
8 ages.

9 “(3) Any person adversely affected or aggrieved by
10 an order issued under paragraph (1) may obtain review
11 of the order’s conformance with this subsection, and any
12 regulations issued to carry out this section, in the United
13 States court of appeals for a circuit in which the reprisal
14 is alleged in the order to have occurred. No petition seek-
15 ing such review may be filed more than 60 days after issu-
16 ance of the agency head’s order. Review shall conform to
17 chapter 7 of title 5, United States Code.

18 “(d) CONSTRUCTION.—Nothing in this section may
19 be construed to authorize the discharge of, demotion of,
20 or discrimination against an employee for a disclosure
21 other than a disclosure protected by subsection (a) or to
22 modify or derogate from a right or remedy otherwise avail-
23 able to the employee.

24 “(e) COORDINATION WITH OTHER LAW.—This sec-
25 tion does not apply with respect to the Department of De-

1 fense. For the corresponding provision of law applicable
 2 to the Department of Defense, see section 2409 of title
 3 10, United States Code.

4 “(f) DEFINITION.—In this section, the term ‘Inspec-
 5 tor General’ means an Inspector General appointed under
 6 the Inspector General Act of 1978.”.

7 **TITLE VII—DEFENSE TRADE AND** 8 **COOPERATION**

9 **SEC. 7001. PURCHASES OF FOREIGN GOODS.**

10 (a) REPEAL OF EXECUTED REQUIREMENTS.—

11 (1) REQUIREMENT FOR POLICY GUIDANCE.—
 12 Title III of the Act of March 3, 1933 (41 U.S.C.
 13 10a et seq.), commonly referred to as the “Buy
 14 American Act”, is amended in section 4(g) (41
 15 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C)
 16 and (3).

17 (2) REPORTING REQUIREMENT.—Section
 18 9096(b) of Public Law 102–396 (106 Stat. 1924; 41
 19 U.S.C. 10b–2(b)) is repealed.

20 (b) REPEAL OF REDUNDANT PROVISION.—

21 (1) CONSIDERATION OF NATIONAL SECURITY
 22 OBJECTIVES.—Section 2327 of title 10, United
 23 States Code, is repealed.

24 (2) CLERICAL AMENDMENT.—The table of sec-
 25 tions at the beginning of chapter 137 of such title

1 is amended by striking out the item relating to sec-
2 tion 2327.

3 **SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.**

4 (a) TERMINOLOGY REVISIONS.—Section 2531 of title
5 10, United States Code, is amended—

6 (1) in the subsection captions for subsections
7 (a) and (c), by striking out “MOUS AND RELATED”
8 and inserting in lieu thereof “INTERNATIONAL”;

9 (2) in subsection (a), by striking out “proposed
10 memorandum of understanding, or any existing or
11 proposed agreement related to a memorandum of
12 understanding,” in the matter above paragraph (1)
13 and inserting in lieu thereof “proposed international
14 agreement, including a memorandum of understand-
15 ing,”;

16 (3) by striking out “memorandum of under-
17 standing or related agreement” each place it appears
18 and inserting in lieu thereof “international agree-
19 ment”;

20 (4) in subsection (b), by striking out “memo-
21 randum or related agreement” each place it appears
22 in the second sentence and inserting in lieu thereof
23 “international agreement”; and

24 (5) in subsection (c)—

1 (A) by striking out “A” after “AGREE-
 2 MENTS.—” and inserting in lieu thereof “An”;
 3 and

4 (B) by striking out “memorandum or
 5 agreement” and inserting in lieu thereof “inter-
 6 national agreement”.

7 (b) EXPANDED SCOPE OF AGREEMENTS.—Section
 8 2531(a) of title 10, United States Code, is amended by
 9 striking out “research, development, or production” in the
 10 matter above paragraph (1) and inserting in lieu thereof
 11 “research, development, production, or logistics support”.

12 (c) CLERICAL AMENDMENTS.—

13 (1) SECTION HEADING.—The heading of section
 14 2531 of title 10, United States Code, is amended to
 15 read as follows:

16 **“§ 2531. Defense international agreements”.**

17 (2) TABLE OF SECTIONS.—The item relating to
 18 such section in the table of sections at the beginning
 19 of subchapter V of chapter 148 of such title is
 20 amended to read as follows:

“2531. Defense international agreements.”.

21 **SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS,**
 22 **AND STANDARDIZATION.**

23 (a) LIMITED WAIVER OF RESTRICTIONS ON AC-
 24 CRUED REIMBURSABLE LIABILITIES AND CREDITS FOR
 25 CONTINGENCY OPERATIONS.—Section 2347 of title 10,

1 United States Code, is amended by adding at the end the
2 following new subsection:

3 “(c) The Secretary of Defense may waive the restric-
4 tions in subsections (a) and (b) for a period not to exceed
5 180 days upon a written determination that the armed
6 forces are involved in a contingency operation or that in-
7 volvement of the armed forces in a contingency operation
8 is imminent. Upon making such a determination, the Sec-
9 retary shall transmit a copy of the determination to the
10 Committees on Armed Services of the Senate and House
11 of Representatives.”.

12 (b) COMMUNICATIONS SUPPORT.—Section 2350f of
13 title 10, United States Code, is amended—

14 (1) by redesignating subsection (d) as sub-
15 section (e); and

16 (2) by inserting after subsection (c) the follow-
17 ing new subsection:

18 “(d)(1) Nothing in this section shall be construed to
19 limit the authority of the Secretary of Defense, without
20 a formal bilateral agreement or multilateral arrangement,
21 to furnish communications support and related supplies
22 to, or receive communications support and related supplies
23 from, an allied country in accordance with this subsection.

1 “(2) The Secretary of Defense may furnish or receive
2 such support and supplies on a reciprocal basis for a pe-
3 riod not to exceed 90 days—

4 “(A) in order to meet emerging operational re-
5 quirements of the United States and the allied coun-
6 try; or

7 “(B) incident to a joint military exercise with
8 the allied country.

9 “(3) If interconnection of communication circuits is
10 maintained for joint or multilateral defense purposes
11 under the authority of this subsection, the costs of main-
12 taining such circuits may be allocated among the various
13 users.”.

14 **TITLE VIII—COMMERCIAL ITEMS**

15 **SEC. 8001. DEFINITIONS.**

16 Section 4 of the Office of Federal Procurement Policy
17 Act (41 U.S.C. 403), as amended by section 4001(a), is
18 further amended—

19 (1) by striking out “Act—”and inserting in lieu
20 thereof “Act:”;

21 (2) by capitalizing the initial letter in the first
22 word of each paragraph;

23 (3) by striking out the semicolon at the end of
24 each of paragraphs (1), (2), (3), (5), (6), (7), (8),
25 and (9) and inserting in lieu thereof a period;

1 (4) in paragraphs (4) and (10), by striking out
2 “; and” at the end and inserting in lieu thereof a
3 period; and

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

6 “(12) The term ‘commercial item’ means—

7 “(A) property, other than real property,
8 that is of a type customarily used by the gen-
9 eral public or by nongovernmental entities in
10 the course of normal business operations for
11 purposes other than governmental purposes
12 and—

13 “(i) has been sold, leased, or licensed
14 to the general public;

15 “(ii) has not been sold, leased, or li-
16 censed to the general public but has been
17 offered for sale, lease, or license to the
18 general public; or

19 “(iii) is not yet available in the com-
20 mercial marketplace but will be made
21 available for commercial delivery within a
22 reasonable period;

23 “(B) any item that, but for—

1 “(i) modifications of a type customar-
2 ily available in the commercial market-
3 place, or

4 “(ii) minor modifications made to
5 meet Federal Government requirements,
6 would satisfy the criteria in subparagraph (A);

7 “(C) any combination of items meeting the
8 requirements of subparagraph (A), (B), or (D)
9 that are of a type customarily combined and
10 sold in combination to the general public;

11 “(D) installation services, maintenance
12 services, repair services, training services, and
13 other services if such services are procured for
14 support of an item referred to in subparagraph
15 (A), (B), or (C) and if the source of such serv-
16 ices—

17 “(i) offers such services to the general
18 public and the Federal Government con-
19 temporaneously and under similar terms
20 and conditions; and

21 “(ii) offers to use the same work force
22 for providing the Federal Government with
23 such services as the source uses for provid-
24 ing such services to the general public; and

1 “(E) any item, combination of items, or
2 service referred to in subparagraph (A), (B),
3 (C), or (D), regardless of whether the item,
4 combination of items, or service is transferred
5 between or among separate divisions, subsidi-
6 aries, or affiliates of a contractor.

7 “(13) The term ‘nondevelopmental item’
8 means—

9 “(A) any commercial item;

10 “(B) any previously developed item of sup-
11 ply that is in use by a department or agency of
12 the United States, a State or local government,
13 or a foreign government with which the United
14 States has a mutual defense cooperation agree-
15 ment;

16 “(C) any item of supply described in sub-
17 paragraph (A) or (B) that requires only minor
18 modification of the type normally available in
19 the commercial marketplace in order to meet
20 the requirements of the procuring department
21 or agency; or

22 “(D) any item of supply currently being
23 produced that does not meet the requirements
24 of subparagraph (A), (B), or (C) solely because
25 the item—

1 “(i) is not yet in use; or

2 “(ii) is not yet available in the com-
3 mercial marketplace.

4 “(14) The term ‘component’ means any item
5 supplied to the Federal Government as part of an
6 end item or of another component.

7 “(15) The term ‘commercial component’ means
8 any component that is a commercial item.”.

9 **SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMER-**
10 **CIAL ITEMS AND NONDEVELOPMENTAL**
11 **ITEMS.**

12 (a) PREFERENCE REQUIRED.—The Office of Federal
13 Procurement Policy Act (41 U.S.C. 401 et seq.), as
14 amended by section 6102, is further amended by adding
15 at the end the following new section:

16 “PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS
17 AND NONDEVELOPMENTAL ITEMS

18 “SEC. 33. (a) PREFERENCE.—The head of each exec-
19 utive agency shall ensure that, to the maximum extent
20 practicable—

21 “(1) requirements of the executive agency with
22 respect to a procurement of supplies are stated in
23 terms of—

24 “(A) functions to be performed;

25 “(B) performance required; or

26 “(C) essential physical characteristics;

1 “(2) such requirements are defined so that
2 commercial items or, to the extent that commercial
3 items suitable to meet the agency’s needs are not
4 available, other nondevelopmental items may be pro-
5 cured to fulfill such requirements; and

6 “(3) offerors of commercial items and other
7 nondevelopmental items are provided an opportunity
8 to compete in any procurement to fill such require-
9 ments.

10 “(b) IMPLEMENTATION.—The head of each executive
11 agency shall ensure that procurement officials in that ex-
12 ecutive agency, to the maximum extent practicable—

13 “(1) acquire commercial items or other
14 nondevelopmental items to meet the needs of the ex-
15 ecutive agency;

16 “(2) require prime contractors and subcontractors
17 at all levels under the executive agency con-
18 tracts to incorporate commercial items or other
19 nondevelopmental items as components of items sup-
20 plied to the executive agency;

21 “(3) modify requirements in appropriate cases
22 to ensure that the requirements can be met by com-
23 mercial items or, to the extent that commercial
24 items suitable to meet the agency’s needs are not
25 available, other nondevelopmental items;

1 “(4) state specifications in terms that enable
2 and encourage bidders and offerors to supply com-
3 mercial items or, to the extent that commercial
4 items suitable to meet the agency’s needs are not
5 available, other nondevelopmental items in response
6 to the executive agency solicitations;

7 “(5) revise the executive agency’s procurement
8 policies, practices, and procedures not required by
9 law to reduce any impediments in those policies,
10 practices, and procedures to the acquisition of com-
11 mercial items; and

12 “(6) require training of appropriate personnel
13 in the acquisition of commercial items.

14 “(C) PRELIMINARY MARKET RESEARCH.—(1) The
15 head of an executive agency shall conduct market research
16 appropriate to the circumstances—

17 “(A) before developing new specifications for a
18 procurement by that executive agency; and

19 “(B) before soliciting bids or proposals for a
20 contract in excess of the simplified acquisition
21 threshold.

22 “(2) The head of an executive agency shall use the
23 results of market research to determine whether there are
24 commercial items or, to the extent that commercial items

1 suitable to meet the agency's needs are not available, other
2 nondevelopmental items available that—

3 “(A) meet the executive agency's requirements;

4 “(B) could be modified to meet the executive
5 agency's requirements; or

6 “(C) could meet the executive agency's require-
7 ments if those requirements were modified to a rea-
8 sonable extent.

9 “(3) In conducting market research, the head of an
10 executive agency should not require potential sources to
11 submit more than the minimum information that is nec-
12 essary to make the determinations required in paragraph
13 (2).”.

14 (b) REPEAL OF SUPERSEDED PROVISION.—

15 (1) SEPARATE STATEMENT OF PREFERENCE
16 FOR DEPARTMENT OF DEFENSE.—Section 2325 of
17 title 10, United States Code, is repealed.

18 (2) CLERICAL AMENDMENT.—The table of sec-
19 tions at the beginning of chapter 137 of such title
20 is amended by striking out the item relating to sec-
21 tion 2325.

22 **SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.**

23 (a) REQUIRED FAR PROVISIONS.—The Office of
24 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),

1 as amended by section 8002, is further amended by adding
2 at the end the following:

3 “FEDERAL ACQUISITION REGULATION PROVISIONS RE-
4 GARDING ACQUISITIONS OF COMMERCIAL ITEMS AND
5 COMPONENTS

6 “SEC. 34. (a) CONTRACT CLAUSES AND OTHER
7 CLAUSES.—(1)(A) The Federal Acquisition Regulation
8 shall include one or more sets of contract clauses contain-
9 ing the required terms and conditions for the acquisition
10 of commercial items and commercial components by execu-
11 tive agencies and by contractors in the performance of
12 contracts of executive agencies.

13 “(B) The contract clauses referred to in subpara-
14 graph (A) shall include only—

15 “(i) those clauses that are required to imple-
16 ment provisions of law or executive orders applicable
17 to acquisitions of commercial items or commercial
18 components, as the case may be;

19 “(ii) those contract clauses that are essential
20 for the protection of the Federal Government’s inter-
21 est in an acquisition of commercial items or commer-
22 cial components, as the case may be; and

23 “(iii) those contract clauses that are determined
24 to be consistent with standard commercial practice.

25 “(2) Subject to paragraph (3), the Federal Acquisi-
26 tion Regulation shall require that, to the maximum extent

1 practicable, only the contract clauses referred to in para-
2 graph (1) be used in a contract, or be required to be used
3 in a subcontract, for the acquisition of commercial items
4 or commercial components by or for an executive agency.

5 “(3) The Federal Acquisition Regulation shall pro-
6 vide that a contract or subcontract referred to in para-
7 graph (2) may contain contract clauses other than the
8 contract clauses referred to in that paragraph only if the
9 other clauses are essential for the protection of the Fed-
10 eral Government’s interest in—

11 “(A) that contract or subcontract, as deter-
12 mined in writing by the contracting officer for such
13 contract; or

14 “(B) a class of contracts or subcontracts, as de-
15 termined by the head of an agency concerned, unless
16 the determination of that head of an agency is dis-
17 approved by the Administrator.

18 “(4) The Federal Acquisition Regulation shall pro-
19 vide standards and procedures for waiving the use of con-
20 tract clauses required pursuant to paragraph (1), other
21 than those required by law, including standards for deter-
22 mining the cases in which a waiver is appropriate.

23 “(b) MARKET ACCEPTANCE.—(1) The Federal Ac-
24 quisition Regulation shall provide that under appropriate

1 conditions the head of an executive agency may require
2 offerors to demonstrate that the items offered—

3 “(A) have either—

4 “(i) achieved commercial market accept-
5 ance; or

6 “(ii) been satisfactorily supplied to an ex-
7 ecutive agency under current or recent con-
8 tracts for the same or similar requirements; and

9 “(B) otherwise meet the item description, speci-
10 fications, or other criteria prescribed in the public
11 notice and solicitation relating to the contract.

12 “(2) The Federal Acquisition Regulation shall pro-
13 vide guidance to ensure that the criteria for determining
14 commercial market acceptance include the consideration
15 of—

16 “(A) the minimum needs of the executive agen-
17 cy concerned; and

18 “(B) the entire relevant commercial market, in-
19 cluding small businesses.

20 “(C) USE OF FIRM, FIXED PRICE CONTRACTS.—The
21 Federal Acquisition Regulation shall include a require-
22 ment that firm, fixed price contracts or fixed price with
23 economic price adjustment contracts, be used, to the maxi-
24 mum extent practicable, for the acquisition of commercial
25 items.

1 “(d) CONTRACT QUALITY REQUIREMENTS.—The
2 Federal Acquisition Regulation shall include provisions
3 that—

4 “(1) permit, to the maximum extent prac-
5 ticable, a contractor under a commercial items ac-
6 quisition to use the contractor’s existing quality as-
7 surance system as a substitute for compliance with
8 a requirement for the Federal Government to inspect
9 or test the commercial items before the contractor’s
10 tender of those items for acceptance by the Federal
11 Government;

12 “(2) require that, to the maximum extent prac-
13 ticable, an executive agency accept commercial war-
14 ranties (including extended warranties) offered by
15 offerors of commercial items to commercial cus-
16 tomers and use such warranties for the repair and
17 replacement of commercial items; and

18 “(3) set forth guidance to executive agencies re-
19 garding the use of past performance of items and
20 sources as a factor in contract award decisions.

21 “(e) TREATMENT OF TRANSFERS BETWEEN AFFILI-
22 ATES.—The Federal Acquisition Regulation shall provide
23 for a transfer of commercial items from one division, sub-
24 sidiary, or affiliate of a contractor to another division, sub-
25 sidiary, or affiliate of the contractor to be treated as a

1 subcontract for purposes of section 35 of the Office of
2 Federal Procurement Policy Act and the provisions of law
3 amended by section 8005 of the Federal Acquisition
4 Streamlining Act of 1994.”.

5 (b) DEFENSE CONTRACT CLAUSES.—

6 (1) TERMINATION OF DOD AUTHORITY.—Sec-
7 tion 824(b) of the National Defense Authorization
8 Act for Fiscal Years 1990 and 1991 (Public Law
9 101–189; 10 U.S.C. 2325 note) shall cease to be ef-
10 fective on the date on which the regulations imple-
11 menting section 34 of the Office of Federal Procure-
12 ment Policy Act, as added by subsection (a), become
13 effective.

14 (2) SAVINGS PROVISION.—Notwithstanding sec-
15 tion 34(a) of the Office of Federal Procurement Pol-
16 icy Act (as added by subsection (a)), contracts of the
17 Department of Defense entered into before the date
18 on which section 824(b) ceases to be effective under
19 paragraph (1), and subcontracts entered into before
20 such date under such contracts, may include clauses
21 developed pursuant to paragraphs (2) and (3) of sec-
22 tion 824(b) of the National Defense Authorization
23 Act for Fiscal Years 1990 and 1991 (Public Law
24 101–189; 10 U.S.C. 2325 note).

1 **SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN**
2 **LAWS.**

3 The Office of Federal Procurement Policy Act (41
4 U.S.C. 401 et seq.), as amended by section 8003, is fur-
5 ther amended by adding at the end the following:

6 “CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO
7 ACQUISITIONS OF COMMERCIAL ITEMS

8 “SEC. 35. (a) IN GENERAL.—The applicability of a
9 provision of law described in subsection (c) that is enacted
10 after the date of the enactment of the Federal Acquisition
11 Streamlining Act of 1994 to contracts for the acquisition
12 of commercial items may be waived on a class basis in
13 the Federal Acquisition Regulation. Such a waiver shall
14 not apply to a provision of law that expressly refers to
15 this section and prohibits the waiver of that provision of
16 law.

17 “(b) WAIVER OF APPLICABILITY TO SUB-
18 CONTRACTS.—(1) The applicability of a provision of law
19 described in subsection (c) to subcontracts under a con-
20 tract for the acquisition of commercial items or a sub-
21 contract for the acquisition of commercial components
22 may be waived on a class basis in the Federal Acquisition
23 Regulation. Such a waiver shall not apply to a provision
24 of law that expressly refers to this section and prohibits
25 the waiver of that provision of law.

1 “(2) Nothing in this subsection shall be construed to
2 authorize the waiver of the applicability of any provision
3 of law with respect to—

4 “(A) any contract with a prime contractor; or

5 “(B) any subcontract under a contract with a
6 prime contractor who does not substantially trans-
7 form the commercial items supplied under the con-
8 tract.

9 “(c) COVERED LAW.—A provision of law referred to
10 in subsections (a) and (b) is any provision of law that,
11 as determined by the Federal Acquisition Regulatory
12 Council, sets forth policies, procedures, requirements, or
13 restrictions for the procurement of property or services by
14 the Federal Government.”.

15 **SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
16 **LAW.**

17 (a) ARMED SERVICES ACQUISITIONS.—

18 (1) PROHIBITION ON CONTINGENT FEES.—Sec-
19 tion 2306(b) of title 10, United States Code, as
20 amended by section 4022(a), is further amended by
21 inserting before the period at the end of the sentence
22 added by section 4022(a) the following: “or to a con-
23 tract for the acquisition of commercial items”.

24 (2) REQUIREMENT TO IDENTIFY SUPPLIERS
25 AND SOURCES OF SUPPLIES.—Paragraph (2) of sec-

1 tion 2384(b) of title 10, United States Code, is
2 amended to read as follows:

3 “(2) The regulations prescribed pursuant to para-
4 graph (1) do not apply to a contract that requires the de-
5 livery of supplies that are commercial items, as defined
6 in section 2302 of this title.”.

7 (3) PROHIBITION AGAINST DOING BUSINESS
8 WITH CERTAIN OFFERORS OR CONTRACTORS.—Sec-
9 tion 2393(d) of title 10, United States Code, as
10 amended by section 4022(e), is further amended by
11 adding at the end the following: “The requirement
12 shall not apply in the case of a subcontract for the
13 acquisition of commercial items (as defined in sec-
14 tion 4(12) of the Office of Federal Procurement Pol-
15 icy Act (41 U.S.C. 403(12))).”.

16 (4) PROHIBITION ON LIMITATION OF SUB-
17 CONTRACTOR DIRECT SALES.—Section 2402 of title
18 10, United States Code, as amended by section
19 4022(b), is further amended by adding at the end
20 the following new subsection:

21 “(d)(1) An agreement between the contractor in a
22 contract for the acquisition of commercial items and a
23 subcontractor under such contract that restricts sales by
24 such subcontractor directly to persons other than the con-
25 tractor may not be considered to unreasonably restrict

1 sales by that subcontractor to the United States in viola-
2 tion of the provision included in such contract pursuant
3 to subsection (a) if the agreement does not result in the
4 Federal Government being treated differently with regard
5 to the restriction than any other prospective purchaser of
6 such commercial items from that subcontractor.

7 “(2) In paragraph (1), the term ‘commercial item’
8 has the meaning given such term in section 4(12) of the
9 Office of Federal Procurement Policy Act (41 U.S.C.
10 403(12)).”.

11 (5) CONTRACTOR INVENTORY ACCOUNTING SYS-
12 TEMS: STANDARDS.—Section 2410b of title 10,
13 United States Code, is amended—

14 (A) by inserting “(a) REGULATIONS RE-
15 QUIRED.—” before “The Secretary of Defense”;
16 and

17 (B) by adding at the end the following new
18 subsection:

19 “(b) INAPPLICABILITY TO ACQUISITIONS OF COM-
20 Mercial ITEMS.—The regulations prescribed pursuant to
21 subsection (a) need not apply to a contract for the acqui-
22 sition of commercial items (as defined in section 4(12) of
23 the Office of Federal Procurement Policy Act (41 U.S.C.
24 403(12))).”.

1 (6) PROHIBITION ON PERSONS CONVICTED OF
2 DEFENSE-CONTRACT RELATED FELONIES.—Para-
3 graph (4) of section 2408(a) of title 10, United
4 States Code, as added by section 4022(f), is amend-
5 ed—

6 (A) by inserting after subparagraph (A)
7 the following:

8 “(B) A contract referred to in such subpara-
9 graph that is for the acquisition of commercial items
10 (as defined in section 4(12) of the Office of Federal
11 Procurement Policy Act (41 U.S.C. 403(12))).”; and

12 (B) by inserting “or (B)” before the period
13 at the end of subparagraph (C).

14 (b) CIVILIAN AGENCY ACQUISITIONS.—

15 (1) RESTRICTIONS ON SUBCONTRACTOR SALES
16 TO THE UNITED STATES.—Section 303G of the Fed-
17 eral Property and Administrative Services Act of
18 1949 (41 U.S.C. 253g), as amended by section
19 4023(b), is further amended by adding at the end
20 the following new subsection:

21 “(d) An agreement between the contractor in a con-
22 tract for the acquisition of commercial items and a sub-
23 contractor under such contract that restricts sales by such
24 subcontractor directly to persons other than the contractor
25 may not be considered to unreasonably restrict sales by

1 that subcontractor to the United States in violation of the
2 provision included in such contract pursuant to subsection
3 (a) if the agreement does not result in the Federal Govern-
4 ment being treated differently with regard to the restric-
5 tion than any other prospective purchaser of such commer-
6 cial items from that subcontractor.”.

7 (2) PROHIBITION ON CONTINGENT FEES.—Sec-
8 tion 304(a) of the Federal Property and Administra-
9 tive Services Act of 1949 (41 U.S.C. 254(a)), as
10 amended by section 4023(a), is further amended by
11 inserting before the period at the end of the sentence
12 added by section 4023(a) the following: “or to a con-
13 tract for the acquisition of commercial items”.

14 (c) ACQUISITIONS GENERALLY.—

15 (1) FEDERAL WATER POLLUTION CONTROL
16 ACT.—Section 508 of the Federal Water Pollution
17 Control Act (33 U.S.C. 1368) is amended by adding
18 at the end the following new subsection:

19 “(f)(1) No certification by a contractor, and no con-
20 tract clause, may be required in the case of a contract
21 for the acquisition of commercial items in order to imple-
22 ment a prohibition or requirement of this section or a pro-
23 hibition or requirement issued in the implementation of
24 this section.

1 “(2) In paragraph (1), the term ‘commercial item’
2 has the meaning given such term in section 4(12) of the
3 Office of Federal Procurement Policy Act (41 U.S.C.
4 403(12)).”.

5 (2) CONTRACT WORK HOURS AND SAFETY
6 STANDARDS ACT.—The Contract Work Hours and
7 Safety Standards Act (title I of the Work Hours and
8 Safety Act of 1962 (40 U.S.C. 327 et seq.)) is
9 amended by adding at the end the following new sec-
10 tion:

11 “SEC. 108. (a) No certification by a contractor, and
12 no contract clause, may be required in the case of a con-
13 tract for the acquisition of commercial items in order to
14 implement a prohibition or requirement in this title.

15 “(b) In subsection (a), the term ‘commercial item’
16 has the meaning given such term in section 4(12) of the
17 Office of Federal Procurement Policy Act (41 U.S.C.
18 403(12)).”.

19 (3) OFFICE OF FEDERAL PROCUREMENT POL-
20 ICY ACT REQUIREMENT RELATING TO PROCUREMENT
21 INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of
22 the Office of Federal Procurement Policy Act (41
23 U.S.C. 423) is amended by adding at the end the
24 following new subparagraph:

1 “(C) This subsection does not apply to a contract for
2 the acquisition of commercial items.”.

3 (4) CERTAIN PROVISIONS OF THE ANTI-KICK-
4 BACK ACT OF 1986.—

5 (A) REQUIREMENT FOR CONTRACT
6 CLAUSE.—Section 7 of the Anti-Kickback Act
7 of 1986 (41 U.S.C. 57), as amended by section
8 4024(b), is further amended by inserting before
9 the period at the end of subsection (d) the fol-
10 lowing: “or to a prime contract for the acquisi-
11 tion of commercial items (as defined in section
12 4(12) of such Act (41 U.S.C. 403(12)))”.

13 (B) INSPECTION AUTHORITY.—Section 8
14 of such Act (41 U.S.C. 58) is amended by add-
15 ing at the end the following: “This section does
16 not apply with respect to a prime contract for
17 the acquisition of commercial items (as defined
18 in section 4(12) of the Office of Federal Pro-
19 curement Policy Act (41 U.S.C. 403(12)))”.

20 (5) DRUG-FREE WORKPLACE ACT OF 1988.—
21 Section 5152(a)(1) of the Drug-Free Workplace Act
22 of 1988 (subtitle D of title V of Public Law 100–
23 690; 41 U.S.C. 701(a)(1)), as amended by section
24 4024(e), is further amended by inserting after the
25 matter inserted by such section 4024(e) the follow-

1 ing: “, other than a contract for the procurement of
2 commercial items (as defined in section 4(12) of
3 such Act (41 U.S.C. 403(12))),”.

4 (6) CLEAN AIR ACT.—Section 306 of the Clean
5 Air Act (42 U.S.C. 7606) is amended by adding at
6 the end the following new subsection:

7 “(f)(1) No certification by a contractor, and no con-
8 tract clause, may be required in the case of a contract
9 for the acquisition of commercial items in order to imple-
10 ment a prohibition or requirement of this section or a pro-
11 hibition or requirement issued in the implementation of
12 this section.

13 “(2) In paragraph (1), the term ‘commercial item’
14 has the meaning given such term in section 4(12) of the
15 Office of Federal Procurement Policy Act (41 U.S.C.
16 403(12)).”.

17 (7) FLY AMERICAN REQUIREMENTS.—Section
18 1117 of the Federal Aviation Act of 1958 (49
19 U.S.C. App. 1517) is amended by adding at the end
20 the following new subsection:

21 “(e)(1) No certification by a contractor, and no con-
22 tract clause, may be required in the case of a contract
23 for the transportation of commercial items in order to im-
24 plement a requirement in this section.

1 “(2) In paragraph (1), the term ‘commercial item’
2 has the meaning given such term in section 4(12) of the
3 Office of Federal Procurement Policy Act (41 U.S.C.
4 403(12)).”.

5 **SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OF-**
6 **FERS OF COMMERCIAL ITEMS.**

7 (a) OFFICE OF FEDERAL PROCUREMENT POLICY
8 ACT AMENDMENT.—Section 18(a) of the Office of Federal
9 Procurement Policy Act (41 U.S.C. 416(a)) is amended
10 by adding at the end the following new paragraph:

11 “(4) The requirements of paragraph (3)(B) do not
12 apply to contracts for the purchase of commercial items.
13 The Administrator shall prescribe for such contracts ap-
14 propriate limits on the applicability of a deadline for sub-
15 mission of bids or proposals that is required by paragraph
16 (1). Such limits shall be incorporated in the Federal Ac-
17 quisition Regulation. The Federal Acquisition Regulation
18 shall specify a minimum period for submission of a re-
19 sponse to a solicitation of offers for a contract for the ac-
20 quisition of commercial items.”.

21 (b) SAVINGS PROVISION.—The deadlines for submis-
22 sion of offers that are in effect in accordance with section
23 18(a) of the Office of Federal Procurement Policy Act (41
24 U.S.C. 416(a)) and section 8(e) of the Small Business Act
25 (15 U.S.C. 637(e)) shall continue to apply to contracts

1 for the purchase of commercial items until the limits pre-
2 scribed pursuant to paragraph (4) of section 18(a) of the
3 Office of Federal Procurement Policy Act (as added by
4 subsection (a)) are incorporated in the Federal Acquisition
5 Regulation, as required by such paragraph.

6 **SEC. 8007. ADVOCATES FOR ACQUISITION OF COMMERCIAL**
7 **AND NONDEVELOPMENTAL ITEMS.**

8 (a) RESPONSIBILITIES OF THE ADVOCATE FOR COM-
9 PETITION.—Section 20(c) of the Office of Federal Pro-
10 curement Policy Act (41 U.S.C. 418(c)) is amended to
11 read as follows:

12 “(c) The advocate for competition for each procuring
13 activity shall be responsible for promoting full and open
14 competition, promoting the acquisition of commercial
15 items and other nondevelopmental items, and challenging
16 barriers to such acquisition, including such barriers as un-
17 necessarily restrictive statements of need, unnecessarily
18 detailed specifications, and unnecessarily burdensome con-
19 tract clauses.”.

20 (b) REPEAL OF SUPERSEDED PROVISION.—Section
21 28 of such Act (41 U.S.C. 424) is repealed.

22 **SEC. 8008. PROVISIONS NOT AFFECTED.**

23 Nothing in this title shall be construed as amending,
24 modifying, or superseding, or as intended to impair or re-
25 strict authorities or responsibilities under—

1 (1) section 111 of the Federal Property and
2 Administrative Services Act of 1949 (40 U.S.C.
3 759), popularly referred to as the “Brooks Auto-
4 matic Data Processing Act”;

5 (2) title IX of the Federal Property and Admin-
6 istrative Services Act of 1949 (40 U.S.C. 541 et
7 seq.), popularly referred to as the “Brooks Archi-
8 tect-Engineers Act”;

9 (3) subsections (a) and (d) of section 8 of the
10 Small Business Act (15 U.S.C. 637); or

11 (4) the Act of June 25, 1938 (41 U.S.C. 46–
12 48c), that was revised and reenacted in the Act of
13 June 23, 1971 (85 Stat. 77), popularly referred to
14 as the “Javits-Wagner-O’Day Act”.

15 **SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL**
16 **GOVERNMENT USE OF MARKET RESEARCH.**

17 (a) REPORT REQUIRED.—Not later than 2 years
18 after the date of the enactment of this Act, the Comptrol-
19 ler General of the United States shall submit to the Con-
20 gress a report on the use of market research by the Fed-
21 eral Government in support of the procurement of com-
22 mercial items and nondevelopmental items.

23 (b) CONTENT OF REPORT.—The report shall include
24 the following:

1 (1) A review of existing Federal Government
2 market research efforts to gather data concerning
3 commercial and other nondevelopmental items.

4 (2) A review of the feasibility of creating a Gov-
5 ernment-wide data base for storing, retrieving, and
6 analyzing market data, including use of existing
7 Federal Government resources.

8 (3) Any recommendations for changes in law or
9 regulations that the Comptroller General considers
10 appropriate.

11 **TITLE IX—MISCELLANEOUS**
12 **PROVISIONS**

13 **SEC. 9001. COMPTROLLER GENERAL REVIEW OF THE PRO-**
14 **VISION OF LEGAL ADVICE FOR INSPECTORS**
15 **GENERAL.**

16 (a) REVIEW AND REPORT REQUIRED.—Not later
17 than March 1, 1995, the Comptroller General of the Unit-
18 ed States shall—

19 (1) conduct a review of the independence of the
20 legal services being provided to Inspectors General
21 appointed under the Inspector General Act of 1978;
22 and

23 (2) submit to Congress a report on the results
24 of the review.

1 (b) MATTERS REQUIRED FOR REPORT.—The report
2 shall include the following matters:

3 (1) With respect to each department or agency
4 of the Federal Government that has an Inspector
5 General appointed in accordance with the Inspector
6 General Act of 1978 whose only or principal source
7 of legal advice is the general counsel or other chief
8 legal officer of the department or agency, an assess-
9 ment of the extent of the independence of the legal
10 advisors providing advice to the Inspector General.

11 (2) A comparison of the findings under the as-
12 sessment referred to in paragraph (1) with findings
13 on the same matters with respect to each Inspector
14 General whose source of legal advice is legal counsel
15 accountable solely to the Inspector General.

16 **SEC. 9002. COST SAVINGS FOR OFFICIAL TRAVEL.**

17 (a) The Administrator of the General Services Ad-
18 ministration, no later than 120 days after enactment of
19 this section, shall issue guidelines to ensure that agencies
20 promote, encourage and facilitate the use of frequent trav-
21 eler programs offered by airlines, hotels and car rental
22 vendors by Federal employees who engage in official air
23 travel, for the purpose of realizing to the maximum extent
24 practicable cost savings for official travel.

1 (b) Any awards granted under such a frequent trav-
2 eler program accrued through official travel shall be used
3 only for official travel.

4 (c) Within one year of enactment of this section, the
5 Administrator shall report to the Congress on efforts to
6 promote the use of frequent traveler programs by Federal
7 employees.

8 **SEC. 9003. PROMPT RESOLUTION OF AUDIT RECOMMENDA-**
9 **TIONS.**

10 Federal agencies shall resolve or take corrective ac-
11 tion on all Office of Inspector General audit report find-
12 ings within a maximum of six months after their issuance,
13 or, in the case of audits performed by non-Federal audi-
14 tors, six months after receipt of the report by the Federal
15 Government.

16 **SEC. 9004. UNIFORM SUSPENSION AND DEBARMENT.**

17 (a) Within six months after the date of enactment
18 of this Act, regulations shall be issued providing that pro-
19 visions for the debarment, suspension, or other exclusion
20 of a participant in a procurement activity under the Fed-
21 eral Acquisition Regulation, or in a nonprocurement activ-
22 ity under regulations issued pursuant to Executive Order
23 No. 12549, shall have government-wide effect. No agency
24 shall allow a party to participate in any procurement or
25 nonprocurement activity if any agency has debarred, sus-

1 pended, or otherwise excluded (to the extent specified in
2 the exclusion agreement) that party from participation in
3 a procurement or nonprocurement activity.

4 (b) The Regulations issued pursuant to subsection (a)
5 shall provide that an agency may grant an exception per-
6 mitting a debarred, suspended, or otherwise excluded
7 party to participate in procurement activities of that agen-
8 cy to the extent exceptions are authorized under the Fed-
9 eral Acquisition Regulation, or to participate in
10 nonprocurement activities of that agency to the extent ex-
11 ceptions are authorized under regulations issued pursuant
12 to Executive Order No. 12549.

13 (c) DEFINITIONS.—For the purposes of this part—

14 (1) “Procurement activities” refers to all acqui-
15 sition programs and activities of the Federal Gov-
16 ernment, as defined in the Federal Acquisition Reg-
17 ulation.

18 (2) “Nonprocurement activities” refers to all
19 programs and activities involving Federal financial
20 and nonfinancial assistance and benefits, as covered
21 by Executive Order No. 12549 and the Office of
22 Management and Budget guidelines implementing
23 that order.

24 (3) “Agency” refers to executive departments
25 and agencies.

1 **TITLE X—EFFECTIVE DATES**
2 **AND IMPLEMENTATION**

3 **SEC. 10001. EFFECTIVE DATES.**

4 (a) **EFFECTIVE DATE OF ACT.**—Except as otherwise
5 provided in this Act, this Act shall take effect on the date
6 of the enactment of this Act.

7 (b) **EFFECTIVE DATE OF AMENDMENTS.**—Except as
8 otherwise provided in this Act, the amendments made by
9 this Act shall take effect on the date on which final imple-
10 menting regulations are prescribed in accordance with sec-
11 tion 10002.

12 **SEC. 10002. IMPLEMENTING REGULATIONS.**

13 (a) **PROPOSED CHANGES.**—Proposed changes to the
14 Federal Acquisition Regulation and such other proposed
15 regulations (or changes to existing regulations) as may be
16 necessary to implement this Act shall be published in the
17 Federal Register not later than 210 days after the date
18 of the enactment of this Act.

19 (b) **PUBLIC COMMENT.**—The proposed regulations
20 described in subsection (a) shall be made available for
21 public comment for a period of not less than 60 days.

22 (c) **FINAL REGULATIONS.**—Final regulations shall be
23 published in the Federal Register not later than 330 days
24 after the date of enactment of this Act.

1 (d) APPLICABILITY.—(1) The amendments made by
2 this Act shall apply, in the manner prescribed in such final
3 regulations, to any solicitation that is issued or any unso-
4 licited proposal that is received on or after the date de-
5 scribed in paragraph (3).

6 (2) The amendments made by this Act shall apply,
7 to the extent and in the manner prescribed in such final
8 regulations, to any matter related to—

9 (A) a contract that is in effect on the date de-
10 scribed in paragraph (3);

11 (B) an offer under consideration on the date
12 described in paragraph (3); or

13 (C) any other proceeding or action that is ongoing
14 on the date described in paragraph (3).

15 (3) The date referred to in paragraphs (1) and (2)
16 is the date specified in such regulations, which—

17 (A) shall not be earlier than the end of the 30-
18 day period that begins on the date the regulations
19 required by subsection (c) are published; and

20 (B) shall not be later than October 1, 1995.

21 (e) REQUIREMENT FOR CLARITY.—Officers and em-
22 ployees of the Federal Government who prescribe regula-
23 tions to implement this Act and the amendments made
24 by this Act shall make every effort practicable to ensure
25 that the regulations are concise and are easily understand-

1 able by potential offerors as well as by Government offi-
2 cials.

3 (f) SAVINGS PROVISION.—Nothing in this Act shall
4 be construed to affect the validity of any action taken or
5 any contract entered into prior to the date specified in
6 the regulations pursuant to subsection (d)(3) except to the
7 extent and in the manner prescribed in such regulations.

8 **SEC. 10003. EVALUATION BY THE COMPTROLLER GENERAL.**

9 (a) EVALUATION RELATING TO ISSUANCE OF REGU-
10 LATIONS.—Not later than December 1, 1995, the Comp-
11 troller General shall submit to the committees referred to
12 in subsection (c) a report evaluating compliance with the
13 requirements in section 10002, relating to the issuance of
14 implementing regulations.

15 (b) EVALUATION OF IMPLEMENTATION OF REGULA-
16 TIONS.—Not later than December 1, 1996, the Comptrol-
17 ler General shall submit to the committees referred to in
18 subsection (c) a report evaluating the effectiveness of the
19 regulations implementing this Act in streamlining the ac-
20 quisition system and fulfilling the other purposes of this
21 Act. The report shall include the Comptroller General's
22 evaluation of the extent to which the departments and
23 agencies of the Federal Government, in implementing this
24 Act and the amendments made by this Act, are reducing
25 acquisition management layers and associated costs.

1 (c) COMMITTEES DESIGNATED TO RECEIVE THE RE-
2 PORTS.—The Comptroller General shall submit the re-
3 ports required by this section to the Committees on Armed
4 Services and on Governmental Affairs of the Senate and
5 the Committees on Small Business on Government Oper-
6 ations of the House of Representatives.

7 **SEC. 10004. DATA COLLECTION THROUGH THE FEDERAL**
8 **PROCUREMENT DATA SYSTEM.**

9 (a) DATA COLLECTION REQUIRED.—The Federal
10 Procurement Data System described in section 6(d)(4)(A)
11 of the Office of Federal Procurement Policy Act (41
12 U.S.C. 405(d)(4)(A)) shall be modified to collect from con-
13 tracts in excess of the simplified acquisition threshold data
14 pertaining to the following matters:

15 (1) Contract awards made pursuant to competi-
16 tions conducted pursuant to section 2323 of title 10,
17 United States Code, or section 8(c) of the Small
18 Business Act (15 U.S.C. 637(c)).

19 (2) Awards to business concerns owned and
20 controlled by women.

21 (3) Number of offers received in response to a
22 solicitation.

23 (4) Task order contracts.

24 (5) Contracts for the acquisition of commercial
25 items.

1 (b) DEFINITION.—In this section, the term “sim-
2 plified acquisition threshold” has the meaning given such
3 term in section 4 of the Office of Federal Procurement
4 Policy Act (41 U.S.C. 403).

5 **TITLE XI—WAIVER OF THE AP-**
6 **PLICATION OF THE PREVAIL-**
7 **ING WAGE-SETTING REQUIRE-**
8 **MENTS TO VOLUNTEERS**

9 **SEC. 11001. SHORT TITLE.**

10 This title may be cited as the “Community Improve-
11 ment Volunteer Act of 1994”.

12 **SEC. 11002. PURPOSE.**

13 It is the purpose of this title to promote and provide
14 more opportunities for people who wish to volunteer their
15 services in the construction, repair or alteration (including
16 painting and decorating) of public buildings and public
17 works funded, in whole or in part, with Federal financial
18 assistance authorized under certain Federal programs that
19 might not otherwise be possible without the use of volun-
20 teers, by waiving the application of the otherwise applica-
21 ble prevailing wage-setting provisions of the Act of March
22 3, 1931 (commonly known as the “Davis-Bacon Act”) (40
23 U.S.C. 276a et seq.) to such volunteers.

1 **SEC. 11003. WAIVER.**

2 (a) IN GENERAL.—The requirement that certain la-
3 borers and mechanics be paid in accordance with the
4 wage-setting provisions of the Act of March 3, 1931 (com-
5 monly known as the “Davis-Bacon Act”) (40 U.S.C. 276a
6 et seq.) as set forth in any of the Acts or provisions de-
7 scribed in subsection (d), and the provisions relating to
8 wages, in any federally assisted or insured contract or sub-
9 contract for construction, shall not apply to any individ-
10 ual—

11 (1) who volunteers—

12 (A) to perform a service for a public or
13 private entity for civic, charitable, or humani-
14 tarian reasons, without promise, expectation, or
15 receipt of compensation for services rendered
16 other than expenses, reasonable benefits, or a
17 nominal fee (as defined in subsection (b)), but
18 solely for the personal purpose or pleasure of
19 the individual; and

20 (B) to provide such services freely and
21 without pressure or coercion, direct or implied,
22 from an employer;

23 (2) whose contribution of service is not for the
24 benefit of any contractor otherwise performing or
25 seeking to perform work on the same project; and

1 (3) who is not otherwise employed at any time
2 under the federally assisted or insured contract or
3 subcontract involved for construction with respect to
4 the project for which the individual is volunteering.

5 (b) EXPENSES.—Payments of expenses, reasonable
6 benefits, or a nominal fee may be provided to volunteers
7 described in subsection (a) if the Secretary of Labor deter-
8 mines, after an examination of the total amount of pay-
9 ments made (relating to expenses, benefits, or fees) in the
10 context of the economic realities of the specific federally
11 assisted or insured project, that such payments are appro-
12 priate. Subject to such a determination—

13 (1) a payment for an expense may be received
14 by a volunteer for items such as uniform allowances,
15 protective gear and clothing, reimbursement for ap-
16 proximate out-of-pocket expenses, or for the cost or
17 expense of meals and transportation;

18 (2) a reasonable benefit may include the inclu-
19 sion of a volunteer in a group insurance plan (such
20 as a liability, health, life, disability, or worker's com-
21 pensation plan) or pension plan, or the awarding of
22 a length of service award; and

23 (3) a nominal fee may not be used as a sub-
24 stitute for compensation and may not be tied to pro-
25 ductivity.

1 The decision as to what constitutes a nominal fee for pur-
2 poses of paragraph (3) shall be made on a case-by-case
3 basis and in the context of the economic realities of the
4 situation involved.

5 (c) ECONOMIC REALITY.—For purposes of subsection
6 (b), in determining whether an expense, benefit, or fee de-
7 scribed in such subsection may be paid to volunteers in
8 the context of the economic realities of the particular situ-
9 ation, the Secretary of Labor shall not approve any such
10 expense, benefit, or fee that has the effect of undermining
11 labor standards by creating downward pressure on prevail-
12 ing wages in the local construction industry.

13 (d) CONTRACTS EXEMPTED.—For purposes of sub-
14 section (a), the Acts or provisions described in this sub-
15 section are the following:

16 (1) The Library Services and Construction Act
17 (20 U.S.C. 351 et seq.).

18 (2) The Indian Self-Determination and Edu-
19 cation Assistance Act (25 U.S.C. 450 et seq.).

20 (3) Section 329 of the Public Health Service
21 Act (42 U.S.C. 254b).

22 (4) Section 330 of the Public Health Service
23 Act (42 U.S.C. 254c).

1 **SEC. 11004. REPORT.**

2 Not later than December 31, 1997, the Secretary of
3 Labor shall prepare and submit to the appropriate com-
4 mittees of Congress a report that—

5 (1) identifies and assesses, to the maximum ex-
6 tent practicable—

7 (A) the projects for which volunteers were
8 permitted to work under this title; and

9 (B) the number of volunteers permitted to
10 work because of the compliance of entities with
11 the provisions of this title; and

12 (2) contains recommendations with respect to
13 Acts related to the Davis-Bacon Act that could be
14 addressed to permit volunteer work.

Passed the Senate July 1 (legislative day, June 7),
1994.

Attest:

Secretary.

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