

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2238

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 1993

Mr. CONYERS (for himself and Mr. DELLUMS) introduced the following bill; which was referred jointly to the Committees on Government Operations and Armed Services

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## A BILL

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, 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 Improvement Act of 1993”.

1       **TITLE I—ENHANCEMENT OF**  
2       **COMPETITION IN CONTRACTING**  
3       **Subtitle A—Acquisition of**  
4       **Commercial Items**

5       **SEC. 111. PREFERENCE FOR ACQUISITION OF COMMERCIAL**  
6       **ITEMS.**

7       Section 16 of the Office of Federal Procurement Pol-  
8       icy Act (41 U.S.C. 414) is amended by redesignating para-  
9       graphs (2), (3), and (4) in order as paragraphs (3), (4),  
10      and (5), respectively, and by inserting after paragraph (1)  
11      the following new paragraph:

12             “(2) implement a preference for the acquisition  
13             of commercial items by—

14                     “(A) whenever practicable, stating speci-  
15                     fications in solicitation for bids and proposals in  
16                     terms such that bidders and offerors are en-  
17                     abled and encouraged to offer to supply com-  
18                     mercial items in response to agency solicita-  
19                     tions;

20                     “(B) reducing impediments to the acquisi-  
21                     tion of commercial items in agency procurement  
22                     policies, practices, and procedures not required  
23                     by law; and

24                     “(C) requiring training of appropriate per-  
25                     sonnel in the acquisition of commercial items;”.

1 **SEC. 112. ACQUISITION OF COMMERCIAL ITEMS.**

2 Section 28 of the Office of Federal Procurement Pol-  
3 icy Act (41 U.S.C. 424) is amended to read as follows:

4 **“SEC. 28. ACQUISITION OF COMMERCIAL ITEMS.**

5 “(a) MARKET RESEARCH.—Before soliciting bids or  
6 proposals for a contract for property or services, an execu-  
7 tive agency shall conduct market research, appropriate to  
8 the circumstances, to determine whether the needs of the  
9 agency can be met by the acquisition of commercial items.

10 “(b) ADVOCATE FOR ACQUISITION OF COMMERCIAL  
11 ITEMS.—

12 “(1) ESTABLISHMENT.—There is established in  
13 the Office of Federal Procurement Policy the posi-  
14 tion of Advocate for the Acquisition of Commercial  
15 Items (hereinafter in this subsection referred to as  
16 the ‘Advocate’).

17 “(2) FUNCTIONS.—The Advocate shall—

18 “(A) monitor compliance by executive  
19 agencies with the preference required under sec-  
20 tion 16(2) for the acquisition of commercial  
21 items;

22 “(B) make recommendations and proposals  
23 to the Administrator regarding the reform of  
24 procurement statutes and regulations to imple-  
25 ment that preference; and

1           “(C) report to the Administrator on the  
2           prospective effect of proposed statutes and reg-  
3           ulations on the acquisition of commercial  
4           items.”.

5 **SEC. 113. REGULATIONS AND SIMPLIFIED FORM CON-**  
6 **TRACTS.**

7           (a) REVISION OF FAR.—Unless otherwise specifically  
8           provided in this title, not later than 180 days after the  
9           date of the enactment of this title, the Federal Acquisition  
10          Regulation issued under section 25(c) of the Office of Fed-  
11          eral Procurement Policy Act (41 U.S.C. 421(c)) shall be  
12          revised to implement the amendments made by this sub-  
13          title.

14          (b) SIMPLIFIED UNIFORM CONTRACT.—(1)(A) The  
15          revision of the Federal Acquisition Regulation under sub-  
16          section (a) shall include issuance of one or more simplified  
17          uniform contracts for the acquisition of commercial items  
18          by Federal agencies and shall require that such simplified  
19          uniform contract or contracts be used for the acquisition  
20          of commercial items to the maximum extent practicable.  
21          The uniform contract or contracts shall include only—

22                  (i) those contract clauses that are required to  
23                  implement provisions of law applicable to such an  
24                  acquisition;

1           (ii) those contract clauses that are essential for  
2           the protection of the Federal Government's interest  
3           in such an acquisition; and

4           (iii) those contract clauses that are determined  
5           to be consistent with standard commercial practice  
6           and appropriate for inclusion in such contracts.

7           (B) In addition to the clauses described under sub-  
8           paragraph (A), contracts for the acquisition of commercial  
9           items may include such clauses as are essential for the  
10          protection of the Federal Government's interest in—

11          (i) a particular contract, as determined in writ-  
12          ing by the contracting officer for such contract; or

13          (ii) a class of contracts, as determined by the  
14          agency head, in consultation with the Administrator  
15          for Federal Procurement Policy.

16          (C) Contracts for the acquisition of commercial items  
17          may not include any clause other than those clauses au-  
18          thorized under subparagraph (A) or (B).

19          (2)(A) Except as provided in subparagraph (B), a  
20          prime contractor under a Federal agency contract for the  
21          acquisition of commercial items may only be required to  
22          include in subcontracts under such contract—

23          (i) those contract clauses that are required to  
24          implement provisions of law applicable to such sub-  
25          contracts; and

1           (ii) those contract clauses that are essential for  
2           the protection of the Federal Government's interest  
3           in such subcontracts.

4           (B) In addition to the clauses described under sub-  
5           paragraph (A), a contractor under a Federal agency con-  
6           tract for the acquisition of commercial items may be re-  
7           quired to include in a subcontract under such contract  
8           such clauses as are essential for the protection of the Fed-  
9           eral Government's interest in—

10           (i) a particular subcontract, as determined in  
11           writing by the contracting officer for such contract;  
12           or

13           (ii) a class of subcontracts, as determined by  
14           the agency head, in consultation with the Adminis-  
15           trator for Federal Procurement Policy.

16           (C) A Federal agency may not require a contractor  
17           for the acquisition of commercial items to include in a sub-  
18           contract for that acquisition any clause other than those  
19           clauses authorized under subparagraph (A) or (B).

20           (3) Notwithstanding paragraphs (1) and (2) of this  
21           subsection, the Department of Defense may use uniform  
22           contract clauses developed under paragraphs (2) and (3)  
23           of section 824(b) of the National Defense Authorization  
24           Act for Fiscal Years 1990 and 1991 (10 U.S.C. 2325  
25           note; Public Law 101-189) until September 30, 1995.

1 (c) WARRANTIES.—The Federal Acquisition Regula-  
2 tion shall require that, to the maximum extent practicable,  
3 Federal agencies take advantage of warranties offered by  
4 commercial contractors and use such warranties for the  
5 repair and replacement of commercial items.

6 (d) MARKET ACCEPTANCE.—The Federal Acquisition  
7 Regulation shall direct agencies to require, where appro-  
8 priate and in accordance with criteria prescribed in the  
9 regulations, offerors to demonstrate in their offers that  
10 products being offered have—

11 (1)(A) achieved a level of commercial market  
12 acceptance necessary to indicate that the products  
13 are suitable for the agency's use; or

14 (B) been satisfactorily supplied under current  
15 or recent contracts for the same or similar require-  
16 ments; and

17 (2) otherwise meet the product description,  
18 specifications, or other criteria prescribed by the  
19 public notice and solicitation.

20 (e) PAST PERFORMANCE.—The Federal Acquisition  
21 Regulation shall provide guidance to Federal agencies on  
22 the use of past performance of products and sources as  
23 a factor in award decisions.

1           **Subtitle B—Miscellaneous**

2   **SEC. 121. TRUTH IN NEGOTIATIONS ACT.**

3           (a) AMENDMENTS.—Section 304(d)(4) of the Federal  
4 Property and Administrative Services Act of 1949 (41  
5 U.S.C. 254(d)(4)) is amended to read as follows:

6           “(4) AUTHORITY TO REQUIRE COST OR PRICING  
7 DATA.—When cost or pricing data need not be re-  
8 quired to be submitted pursuant to paragraph (5),  
9 such data shall not be required to be submitted un-  
10 less the head of the agency determines that such  
11 data are necessary for the evaluation by the agency  
12 of the reasonableness of the price of the contract or  
13 subcontract. In any case in which the head of the  
14 agency requires such data to be submitted under  
15 this paragraph, the head of the agency shall docu-  
16 ment in writing the reasons for such requirement.”.

17           (b) REQUIREMENT FOR REVISED REGULATIONS.—  
18 Not later than 180 days after the date of enactment of  
19 this Act, the Federal Acquisition Regulation issued under  
20 section 25(c) of the Office of Federal Procurement Policy  
21 Act (41 U.S.C. 421(c)) shall be revised to implement sec-  
22 tion 304(d)(4) of the Federal Property and Administrative  
23 Services Act of 1949 (41 U.S.C. 254(d)) and section  
24 2306a(b) of title 10, United States Code, as amended by  
25 subsection (a) and section 302.



1 (c) PROVISIONS TO BE INCLUDED.—(1) In the case  
2 of contracts other than cost-reimbursement research and  
3 development contracts, the revised regulations promul-  
4 gated under subsection (b) shall provide that cost or pric-  
5 ing data may not be requested from a contractor when  
6 it is likely that circumstances will exist in which an excep-  
7 tion to the requirement to provide such data is authorized  
8 by section 304(d)(5) of the Federal Property and Adminis-  
9 trative Services Act of 1949 (41 U.S.C. 254(d)) or section  
10 2306a(b) of title 10, United States Code, unless the head  
11 of the agency determines in writing that such data are  
12 necessary for the evaluation by the agency of the reason-  
13 ableness of the price of the contract or subcontract.

14 (2) The regulations also shall provide clear standards  
15 for determining whether the exceptions authorized by such  
16 sections apply. In the case of the exception provided under  
17 section 304(d)(5)(A)(i) of such Act and section  
18 2306a(b)(1)(A) of such title (relating to adequate price  
19 competition), the regulations shall specify the criteria that  
20 will be used to determine whether adequate price competi-  
21 tion exists. In the case of the exception provided under  
22 section 304(d)(5)(A)(ii) of such Act and section  
23 2306a(b)(1)(B) of such title (relating to established cata-  
24 log or market prices of commercial items sold in substan-  
25 tial quantities to the general public), the regulations shall

1 preclude the consideration of sales to the government, in-  
2 cluding the percentage of an item's overall sales that are  
3 made to the Government, when determining whether the  
4 item has been sold in substantial quantities to the public.

5 (3) The regulations also shall establish reasonable  
6 limitations on requests for sales data relating to commer-  
7 cial items.

8 **SEC. 122. DEFINITIONS.**

9 (a) OFPP ACT.—Section 4 of the Office of Federal  
10 Procurement Policy Act (41 U.S.C. 403) is amended by—

11 (1) striking “and” at the end of paragraph  
12 (10);

13 (2) striking the period at the end of paragraph  
14 (11) and inserting “; and”; and

15 (3) adding at the end the following new para-  
16 graph:

17 “(12) the term ‘commercial items’ means items  
18 regularly used in the course of normal business oper-  
19 ations for other than Government purposes, that—

20 “(A) have been sold, leased, or licensed to  
21 the general public;

22 “(B) have been offered for sale, lease, or  
23 license to the general public;

24 “(C) are not yet available in the commer-  
25 cial marketplace, but will be available in time to

1 satisfy the delivery requirements under a Gov-  
2 ernment solicitation; or

3 “(D) are items that, but for minor modi-  
4 fications made to meet Government require-  
5 ments, would satisfy the criteria set forth in  
6 subparagraph (A), (B), or (C).”.

7 (b) FEDERAL PROPERTY AND ADMINISTRATIVE  
8 SERVICES ACT OF 1949.—Section 309(c) of the Federal  
9 Property and Administrative Services Act of 1949 (40  
10 U.S.C. 259(c)) is amended by inserting “‘commercial  
11 items’,” immediately after “‘item of supply’,”.

12 (c) COMMERCIAL ITEM DEFINED.—In this title, the  
13 term “commercial items” has the meaning given that term  
14 in section 4 of the Office of Federal Procurement Policy  
15 Act (41 U.S.C. 403), as amended by subsection (a).

16 **SEC. 123. EFFECTIVE DATE.**

17 Unless otherwise specifically provided in this title, the  
18 amendments made by this title shall be effective 180 days  
19 after the date of the enactment of this title.

20 **SEC. 124. PROVISIONS NOT AFFECTED.**

21 Nothing in this title shall be construed as amending,  
22 modifying, or superseding, or is intended to impair or re-  
23 strict authorities or responsibilities under—

24 (1) section 111 of the Federal Property and  
25 Administrative Services Act of 1949 (40 U.S.C.

1 759), commonly referred to as the “Brooks Auto-  
2 matic Data Processing Act”;

3 (2) title IX of the Federal Property and Admin-  
4 istrative Services Act of 1949 (40 U.S.C. 541 et  
5 seq.), commonly referred to as the “Brooks Archi-  
6 tect-Engineers Act”;

7 (3) the Small Business Act (15 U.S.C. 631 et  
8 seq.), including section 8(a) of that Act (15 U.S.C.  
9 637(a)); or

10 (4) the Act of June 25, 1938 (41 U.S.C. 46-  
11 48c), commonly referred to as the “Javits-Wagner-  
12 O’Day Act”.

13 **TITLE II—AMENDMENTS TO FED-**  
14 **ERAL PROPERTY AND ADMIN-**  
15 **ISTRATIVE SERVICES ACT OF**  
16 **1949**

17 **SEC. 201. AWARD OF MULTIPLE CONTRACTS.**

18 Section 303B of the Federal Property and Adminis-  
19 trative Services Act of 1949 (41 U.S.C. 253b) is amended  
20 by adding at the end the following:

21 “(g) AWARD OF MULTIPLE CONTRACTS.—In procur-  
22 ing any supply or service using competitive procedures, an  
23 executive agency may award more than one contract for  
24 the same supply or service in any case in which the head  
25 of the agency determines that it is in the best interests

1 of the Government to award those contracts for the pur-  
2 pose of maintaining a continuous source for the supply  
3 or service.”.

4 **SEC. 202. SOLICITATION EVALUATION AND AWARD.**

5 (a) SOLICITATION REQUIREMENTS.—Section 303A  
6 of the Federal Property and Administrative Services Act  
7 of 1949 (41 U.S.C. 253a) is amended—

8 (1) in subsection (b)(1)(A)—

9 (A) by inserting “and significant  
10 subfactors” after “all significant factors”; and

11 (B) by striking “(including price)” and in-  
12 serting “(including cost or price, cost- or price-  
13 related factors, and noncost- or nonprice-related  
14 factors)”;

15 (2) in subsection (b)(1)(B) by inserting “and  
16 subfactors” after “factors”;

17 (3) in subsection (b)(2)(B) by amending clause  
18 (i) to read as follows:

19 “(i) a statement that the proposals  
20 are intended to be evaluated with, and  
21 award made after, discussions with the  
22 offerors, or that the proposals are intended  
23 to be evaluated, and award made, without  
24 discussions with the offerors (other than  
25 discussions conducted for the purpose of

1           minor clarification), unless discussions are  
2           determined to be necessary; and”;

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

5           “(c) ESTABLISHING IMPORTANCE OF FACTORS.—(1)  
6           In prescribing the evaluation factors to be included in each  
7           solicitation for competitive proposals, the head of an agen-  
8           cy—

9           “(A) shall clearly establish the relative impor-  
10          tance assigned to the evaluation factors and  
11          subfactors, including the quality of the product or  
12          services to be provided (including technical capabil-  
13          ity, management capability, and prior experience of  
14          the offeror); and

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

18          “(C) shall, at a minimum, disclose to offerors  
19          whether all evaluation factors other than price or  
20          cost, when combined, are—

21                  “(i) significantly more important than  
22                  price or cost,

23                  “(ii) approximately equal in importance to  
24                  price or cost, or

1           “(iii) significantly less important than  
2           price or cost.

3           “(2) Nothing in this subsection prohibits an agency  
4 from—

5           “(A) providing additional information in a solic-  
6           itation, including numeric weights for all evaluation  
7           factors; or

8           “(B) stating in a solicitation that award will be  
9           made to the offeror that meets the solicitation’s  
10          mandatory requirements at the lowest price or  
11          cost.”.

12          (b) EVALUATION AND AWARD.—Section 303B of the  
13 Federal Property and Administrative Services Act of 1949  
14 (41 U.S.C. 253b) is amended—

15           (1) in subsection (a) by inserting “and award a  
16           contract” after “competitive proposals”;

17           (2) in subsection (c) in the second sentence by  
18           inserting “in accordance with subsection (a)” after  
19           “shall evaluate the bids”;

20           (3) in subsection (d) by amending paragraph  
21           (1) to read as follows:

22           “(1) The executive agency shall evaluate competitive  
23 proposals in accordance with subsection (a) and may  
24 award a contract—

1           “(A) after discussions with the offerors, if writ-  
2           ten or oral discussions have been conducted with all  
3           responsible offerors who submit proposals within the  
4           competitive range; or

5           “(B) without discussions with the offerors  
6           (other than discussions conducted for the purpose of  
7           minor clarification), if the solicitation included a  
8           statement that proposals are intended to be evalu-  
9           ated, and award made, without discussions, unless  
10          discussions are determined to be necessary.”; and

11          (4) in subsection (d) by striking paragraphs (2)  
12          and (3) and by redesignating paragraph (4) as para-  
13          graph (2).

14          (c) APPLICATION.—

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

18                  (A) solicitations for sealed bids or competi-  
19                  tive proposals issued after the end of the 180-  
20                  day period beginning on the date of the enact-  
21                  ment of this Act; and

22                  (B) contracts awarded pursuant to those  
23                  solicitations.

24          (2) EARLIER APPLICATION.—The head of an  
25          agency may apply the amendments made by this sec-



1       tion to solicitations issued before the end of the pe-  
2       riod referred to in paragraph (1). The head of the  
3       agency shall publish in the Federal Register notice  
4       of any such earlier date of application before the be-  
5       ginning of the 10-day period ending on that date.

6       **SEC. 203. CERTIFIED COST OR PRICING DATA THRESHOLD.**

7       (a) CERTIFYING DATA.—

8               (1) AFFECTED CONTRACTS.—Section 304(d) of  
9       the Federal Property and Administrative Services  
10      Act of 1949 (41 U.S.C. 254(d)) is amended—

11               (A) by striking out “\$100,000” each place  
12              it appears and inserting in lieu thereof “the  
13              cost or pricing data threshold”; and

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

16              “(6) For the purposes of this subsection, the  
17              term ‘the cost or pricing data threshold’ means  
18              \$500,000, or, after December 31, 1995, \$100,000.”.

19               (2) APPLICATION.—The amendments made by  
20              this subsection shall apply to—

21               (A) prime contracts, or subcontracts (with-  
22              out regard to the date on which the associated  
23              prime contract was awarded), entered into after  
24              the date on which the Federal Acquisition Reg-

1           ulation is promulgated pursuant to section 204;  
2           and

3                   (B) changes or modifications to prime con-  
4           tracts or subcontracts when those changes or  
5           modifications are entered into after the date on  
6           which a final revision of the Federal Acquisition  
7           Regulation is issued pursuant to section 204.

8           (3) MODIFICATION.—Upon the request of a  
9           contractor, the head of an agency may modify a con-  
10          tract to reflect the dollar thresholds set forth in the  
11          revision to the Federal Acquisition Regulation issued  
12          pursuant to section 204. Any such modification shall  
13          be made without requiring consideration.

14          (b) REGULATIONS FOR BELOW-THRESHOLD PRO-  
15          CUREMENTS.—

16                  (1) TYPE OF PROCUREMENTS.—The Adminis-  
17          trator of General Services, in consultation with the  
18          Administrator for Federal Procurement Policy, shall  
19          prescribe regulations identifying the type of procure-  
20          ments for which contracting officers should consider  
21          requiring the submission of certified cost or pricing  
22          data under section 304(d) of the Federal Property  
23          and Administrative Services Act of 1949 (41 U.S.C  
24          254).

1           (2) TYPES OF INFORMATION.—The Adminis-  
2           trator of General Services, in consultation with the  
3           Administrator for Federal Procurement Policy, shall  
4           prescribe regulations concerning the types of infor-  
5           mation that offerors may be required to submit for  
6           a contracting officer to consider in determining  
7           whether the price of a procurement to the Govern-  
8           ment is fair and reasonable when certified cost or  
9           pricing data are not required to be submitted under  
10          section 304(d) of such Act because the price of the  
11          procurement to the United States is not expected to  
12          exceed \$500,000. Such information, at a minimum,  
13          shall include appropriate information on the prices  
14          at which such offeror has previously sold the same  
15          or similar products.

16          (3) DEADLINE.—The regulations required  
17          under this subsection shall be prescribed no later  
18          than 6 months after the date of the enactment of  
19          this Act.

20          (c) REPEAL OF COMMERCIAL PRICING REQUIRE-  
21          MENTS.—

22          (1) REPEAL.—Section 303E of the Federal  
23          Property and Administrative Services Act of 1949  
24          (41 U.S.C. 253e) is repealed.

1           (2) CLERICAL AMENDMENT.—The first section  
2 of the Federal Property and Administrative Services  
3 Act of 1949 is amended in the table of contents by  
4 striking the item relating to section 303E.

5           (d) REVIEW OF AMENDMENTS.—

6           (1) IN GENERAL.—After the amendments made  
7 by subsections (a) and (c) have been in effect for 1  
8 year, the Comptroller General shall conduct a review  
9 of the effects of the amendments. The Comptroller  
10 General shall coordinate that review, insofar as pos-  
11 sible, with the review conducted by the Inspector  
12 General of the Department of Defense pursuant to  
13 section 803(b) of the National Defense Authoriza-  
14 tion Act for Fiscal Year 1991 (Public Law 101-  
15 510).

16           (2) FACTORS CONSIDERED.—The review con-  
17 ducted under paragraph (1) shall address whether  
18 the amendments made by subsections (a) and (c)  
19 have improved the acquisition process in terms of re-  
20 duced paperwork, financial or other savings to the  
21 Government, an increase in the number of contrac-  
22 tors participating in the contracting process, and the  
23 adequacy of information available to contracting offi-  
24 cers in cases in which certified cost or pricing data  
25 are not required.

1           (3) REPORT.—Not later than the date on which  
2           the President submits the budget for fiscal year  
3           1996 to the Congress pursuant to section 1105 of  
4           title 31, United States Code, the Comptroller Gen-  
5           eral shall submit to the Congress a report on the re-  
6           view conducted under paragraph (1). The report  
7           shall include the comments of the Administrator for  
8           Federal Procurement Policy and the Administrator  
9           of General Services.

10 **SEC. 204. REVISION OF FEDERAL ACQUISITION REGULA-**  
11 **TION; EFFECTIVE DATE.**

12           (a) REVISION OF FAR.—Unless otherwise specifically  
13           provided in this title, not later than 180 days after the  
14           date of the enactment of this Act, the Federal Acquisition  
15           Regulation issued under section 25(c) of the Office of Fed-  
16           eral Procurement Policy Act (41 U.S.C. 421(c)) shall be  
17           revised to reflect the amendments made by sections 201,  
18           202, 203(a) and (c), and 301.

19           (b) EFFECTIVE DATE.—Unless otherwise specifically  
20           provided in this title, the amendments made by this title  
21           and section 301 shall be effective 180 days after the date  
22           of the enactment of this Act.

23           (c) STANDARDS AND REQUIREMENTS FOR COST AND  
24           PRICE AS EVALUATION FACTORS.—

1           (1) IN GENERAL.—The Federal Acquisition  
2 Regulation, as revised pursuant to subsection (a),  
3 shall establish standards and requirements for the  
4 consideration of cost and price to the Government as  
5 evaluation factors under the amendments made by  
6 sections 202(a)(4) and 301.

7           (2) STANDARDS AND REQUIREMENTS.—Stand-  
8 ards and requirements established under paragraph  
9 (1) shall be adequate to ensure that, to the maxi-  
10 mum extent practicable consistent with the needs of  
11 the Federal Government in conducting procure-  
12 ments—

13                   (A) cost or price is an evaluation factor of  
14 sufficient weight to affect each source selection  
15 decision; and

16                   (B) competition among competing offerors  
17 is affected by cost or price.

18 **TITLE III—AMENDMENTS RELAT-**  
19 **ING TO TITLE 10, UNITED**  
20 **STATES CODE**

21 **SEC. 301. SOURCE SELECTION FACTORS.**

22 Paragraph 2305(a)(3) of title 10, United States  
23 Code, is amended to read as follows:

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

4           “(i) shall clearly establish the relative im-  
5 portance assigned to the evaluation factors and  
6 subfactors, including the quality of the product  
7 or services to be provided (including technical  
8 capability, management capability, and prior ex-  
9 perience of the offeror);

10           “(ii) shall include cost or price to the Gov-  
11 ernment as an evaluation factor that must be  
12 considered in the evaluation of proposals; and

13           “(iii) shall, at a minimum, disclose to  
14 offerors whether all evaluation factors other  
15 than price or cost, when combined, are—

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

18           “(II) approximately equal in impor-  
19 tance to price or cost, or

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

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

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

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

8 **SEC. 302. TRUTH IN NEGOTIATIONS.**

9           Section 2306a(c) of title 10, United States Code, is  
10 amended to read as follows:

11           “(c) **AUTHORITY TO REQUIRE COST OR PRICING**  
12 **DATA.**—When cost or pricing data need not be required  
13 to be submitted pursuant to subsection (b), such data shall  
14 not be required to be submitted unless the head of the  
15 agency determines that such data are necessary for the  
16 evaluation by the agency of the reasonableness of the price  
17 of the contract or subcontract. In any case in which the  
18 head of the agency requires such data to be submitted  
19 under this subsection, the head of the agency shall docu-  
20 ment in writing the reasons for such requirement.”.



1                   **TITLE IV—BROOKS ACT**  
2                   **AMENDMENTS**

3   **SEC. 401. SHORT TITLES OF CERTAIN PROVISIONS OF FED-**  
4                   **ERAL PROPERTY AND ADMINISTRATIVE**  
5                   **SERVICES ACT OF 1949.**

6           (a) AUTOMATIC DATA PROCESSING EQUIPMENT  
7 PROVISIONS.—Section 111 of the Federal Property and  
8 Administrative Services Act of 1949 (40 U.S.C. 759) is  
9 amended by adding at the end the following new sub-  
10 section:

11           “(i) This section may be cited as the ‘Brooks Auto-  
12 matic Data Processing Act’.”.

13           (b) ARCHITECTURAL AND ENGINEERING SERVICES  
14 PROVISIONS.—Title IX of the Federal Property and Ad-  
15 ministrative Services Act of 1949 (40 U.S.C. 541–544)  
16 is amended by adding at the end the following new section:

17   **“SEC. 905. SHORT TITLE.**

18           “‘This title may be cited as the ‘Brooks Architect-En-  
19 gineers Act’.”.

20   **SEC. 402. DISMISSAL; AWARD OF COSTS.**

21           Section 111(f)(4) of the Federal Property and Ad-  
22 ministrative Services Act of 1949 (40 U.S.C. 759(f)(4))  
23 is amended by striking subparagraph (C) and inserting  
24 the following:

1       “(C) The board may dismiss a protest that the board  
2 determines—

3           “(i) is frivolous,

4           “(ii) has been brought in bad faith, or

5           “(iii) on its face does not state a valid basis for  
6 protest.

7       “(D) If a party violates or fails to comply in good  
8 faith with, or causes a violation of or failure to comply  
9 in good faith with, an order or decision of the board, the  
10 board may require that party to pay to any other party  
11 the amount of any reasonable costs, including attorney’s  
12 fees, incurred by the other party in seeking compliance  
13 with such order or decision.”.

14 **SEC. 403. OVERSIGHT OF ACQUISITION OF AUTOMATIC**  
15                   **DATA PROCESSING EQUIPMENT BY FEDERAL**  
16                   **AGENCIES.**

17       Section 111 of the Federal Property and Administra-  
18 tive Services Act of 1949 (40 U.S.C. 759), as amended  
19 by this Act, is further amended by inserting after sub-  
20 section (g) the following new subsection:

21       “(h)(1) The Administrator shall collect and compile  
22 data from Federal agencies regarding the procurement of  
23 automatic data processing equipment under this section.  
24 That data shall include, at a minimum, with regard to

1 those procurements specified by the Administrator in reg-  
2 ulation—

3 “(A) the procuring agency,

4 “(B) the contractor,

5 “(C) the automatic data processing equipment  
6 and services procured,

7 “(D) the manufacturer of the equipment pro-  
8 cured,

9 “(E) the amount of the contract,

10 “(F) the type of contract used,

11 “(G) the extent of competition for award,

12 “(H) compatibility restrictions, and

13 “(I) significant modifications of the contract.

14 “(2) The head of each Federal agency shall report  
15 to the Administrator in accordance with regulations issued  
16 by the Administrator all information required to be com-  
17 piled by the Administrator under paragraph (1).

18 “(3) The Administrator—

19 “(A) shall carry out a systematic review and  
20 conduct periodic audits of information received  
21 under this subsection;

22 “(B) shall use such information as appropriate  
23 to determine the compliance of Federal agencies  
24 with the requirements of this section; and

1           “(C) may suspend the delegation to an agency  
2 of authority to lease and purchase automatic data  
3 processing equipment upon any substantial failure  
4 by the head of the agency to report to the Adminis-  
5 trator in accordance with this subsection.

6           “(4) The Administrator shall, upon receipt of infor-  
7 mation that a Federal agency has failed to comply with  
8 the terms of any delegation of authority to lease or pur-  
9 chase automatic data processing equipment or has failed  
10 to comply with any applicable law or regulation, take ap-  
11 propriate corrective action.

12           “(5) Data collected pursuant to this section shall be  
13 drawn from existing Federal agency information re-  
14 sources, and no new or additional information reporting  
15 requirements may be imposed on offerors or contractors  
16 for that purpose.”.

17 **SEC. 404. EFFECTIVE DATE.**

18           The amendments made by this title shall take effect  
19 on the date which is 180 days after the date of the enact-  
20 ment of this title.

1           **TITLE V—MISCELLANEOUS**  
2                           **PROVISIONS**

3   **SEC. 501. PROCUREMENT PROTEST SYSTEM IMPROVE-**  
4                           **MENTS.**

5           (a) GAO RECOMMENDATIONS ON PROTESTS.—Sec-  
6   tion 3554 of title 31, United States Code, is amended—

7                   (1) in subsection (b) by adding at the end the  
8   following new paragraph:

9           “(3) The head of the procuring activity responsible  
10 for the solicitation, proposed award, or award of a contract  
11 shall report to the Comptroller General if the Federal  
12 agency has not fully implemented recommendations of the  
13 Comptroller General under this subsection with respect to  
14 that contract within 60 days after receiving the rec-  
15 ommendations, by not later than the end of that 60-day  
16 period.”;

17                   (2) in subsection (c)(1) by striking “declare an  
18 appropriate interested party to be entitled to” and  
19 inserting “recommend that the Federal agency con-  
20 ducting the procurement pay to an appropriate in-  
21 terested party”;

22                   (3) by amending subsection (c)(2) to read as  
23 follows:

24                   “(2) If the Comptroller General recommends  
25 under paragraph (1) that a Federal agency pay an

1 amount of costs to an interested party, the Federal  
2 agency shall—

3 “(A) pay the amount promptly out of  
4 amounts appropriated by section 1304 of this  
5 title for the payment of judgments, and reim-  
6 burse that appropriation account out of avail-  
7 able funds or by obtaining additional appropria-  
8 tions for that purpose, or

9 “(B) report to the Comptroller General  
10 promptly why the recommendation will not be  
11 followed by the agency.”.

12 (4) by adding at the end of subsection (c) the  
13 following new paragraph:

14 “(3) An interested party to which the Comptroller  
15 General has recommended that costs be paid under para-  
16 graph (1) and the Federal agency recommended to pay  
17 those costs shall attempt to reach agreement on the  
18 amount of the costs to be paid, but if they are unable to  
19 agree, a party may request that the Comptroller General  
20 recommend the amount of the costs to be paid.”; and

21 (5) by amending subsection (e) to read as fol-  
22 lows:

23 “(e)(1) The Comptroller General shall report prompt-  
24 ly to the Committee on Government Operations and the  
25 Committee on Appropriations of the House of Representa-

1 tives and to the Committee on Governmental Affairs and  
2 the Committee on Appropriations of the Senate in 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 inequity or to preserve the integrity  
12 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 the Congress;

18                   or

19                   “(iv) other action.

20           “(2) Not later than January 31 of each year, the  
21 Comptroller General shall transmit to the Congress a sum-  
22 mary report describing each instance in which a Federal  
23 agency did not fully implement a recommendation of the  
24 Comptroller General under subsection (b) or (c) during  
25 the preceding year.”.

1 (b) RATIFICATION OF PRIOR AWARDS.—Amounts to  
2 which the Comptroller General declared an interested  
3 party to be entitled under section 3554 of title 31, United  
4 States Code, as in effect immediately before the enactment  
5 of this Act, shall, if not paid or otherwise satisfied by the  
6 Federal agency concerned before the date of the enact-  
7 ment of this Act, be paid promptly from the appropriation  
8 made by section 1304 of title 31, United States Code, for  
9 the payment of judgments, and the Federal agency shall  
10 reimburse that appropriation account out of available  
11 funds or by obtaining additional appropriations for that  
12 purpose.

13 (c) EFFECTIVE DATE.—The amendments made by  
14 subsection (a) shall take effect at the end of the 45-day  
15 period beginning on the date of the enactment of this Act.

16 **SEC. 502. POST-AWARD DEBRIEFINGS.**

17 (a) AMENDMENT TO OFFICE OF FEDERAL PROCURE-  
18 MENT POLICY ACT.—The Office of Federal Procurement  
19 Policy Act (41 U.S.C. et seq.) is amended by adding at  
20 the end the following new section:

21 **“SEC. 29. POST-AWARD DEBRIEFINGS.**

22 “(a) DEBRIEFING GUIDELINES.—The Federal Acqui-  
23 sition Regulation shall be revised to include guidelines for  
24 the debriefing of unsuccessful offerors for any contract for  
25 an amount in excess of the small purchase threshold which



1 was awarded on a basis other than price alone. Such  
2 guidelines shall provide that such debriefings shall occur  
3 upon the written request of an unsuccessful offeror and  
4 in a timely manner. Such guidelines shall require, to the  
5 maximum extent practicable, such debriefings to include  
6 at least the following:

7           “(1) A detailed review of the offeror’s proposal  
8           in relation to the evaluation factors and subfactors  
9           specified in the solicitation for the contract, includ-  
10          ing identification of any weaknesses and strengths of  
11          the proposal, results of any past performance analy-  
12          ses, and cost realism assessment.

13           “(2) A description of the rationale for the  
14          award of the contract.

15           “(3) The overall evaluated cost and combined  
16          technical and cost scores of the awardee and the de-  
17          briefed offeror, and the technical point scores of the  
18          awardee and the debriefed offeror.

19           “(4) The overall ranking of all offerors.

20           “(b) INFORMATION NOT PROVIDED.—A debriefing  
21          under subsection (a) shall not make point-by-point com-  
22          parisons with other offerors’ proposals and shall not dis-  
23          close any information that is not subject to disclosure  
24          under section 552 of title 5, United States Code, including  
25          information relating to—

1           “(1) trade secrets;

2           “(2) privileged or confidential manufacturing  
3 processes and techniques; and

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

8           “(c) NOTIFICATION OF DISCLOSURE.—Each solicita-  
9 tion for contracts subject to subsection (a) shall notify  
10 participating offerors that the categories of information  
11 described in subsection (a) may be disclosed by the  
12 Government in post-award debriefings.”.

13           (b) REGULATIONS.—The Federal Acquisition Regu-  
14 latory Council shall issue a final revision of the Federal  
15 Acquisition Regulation implementing section 29 of the Of-  
16 fice of Federal Procurement Policy Act, as added by sub-  
17 section (a), not later than 180 days after the date of the  
18 enactment of this Act.

19           (c) EFFECTIVE DATE.—Section 29 of the Office of  
20 Federal Procurement Policy Act, as added by subsection  
21 (a), shall apply with respect to solicitations for contracts  
22 issued after the expiration of the 180-day period beginning  
23 on the date of the enactment of this Act.

1 **SEC. 503. INCREASE IN THE SMALL PURCHASE THRESH-**  
2 **OLD; IMPLEMENTATION OF ELECTRONIC**  
3 **DATA INTERCHANGE SYSTEMS FOR PRO-**  
4 **CUREMENT INFORMATION.**

5 (a) INCREASE.—

6 (1) IN GENERAL.—Section 4(11) of the Office  
7 of Federal Procurement Policy Act (41 U.S.C. 403)  
8 is amended to read as follows:

9 “(11) the term ‘small purchase threshold’  
10 means—

11 “(A) \$50,000, adjusted on October 1 of  
12 each year divisible by 5 to the amount equal to  
13 \$50,000 in constant fiscal year 1990 dollars  
14 (rounded to the nearest \$1,000); or

15 “(B) an amount that is equal to twice the  
16 amount described in subparagraph (A), in the  
17 case of any procurement in which solicitation of  
18 bids or proposals, placement of an order, award  
19 of a contract, provision of notice of award of a  
20 contract, and all other similar actions necessary  
21 for the acquisition of property or services by an  
22 executive agency are performed through an elec-  
23 tronic data interchange system for procurement  
24 information that is approved and certified by  
25 the Administrator under section 30(f);”.

1           (2) INTERIM RULE.—Notwithstanding para-  
2           graph (1), during the 5-year period beginning on the  
3           issuance of final form of revisions to the Federal Ac-  
4           quisition Regulation under subsection (b), buying ac-  
5           tivities shall continue to report, pursuant to section  
6           19(d) of the Office of Federal Procurement Policy  
7           Act (41 U.S.C. 417(d)), procurement awards with a  
8           dollar value of at least \$25,000, but less than  
9           \$100,000, in conformity with the procedures for the  
10          reporting of a contract award in excess of \$25,000  
11          which were in effect on May 24, 1993.

12          (3) EFFECTIVE DATE.—The amendment made  
13          by paragraph (1) shall take effect upon, and apply  
14          to solicitations made and orders placed after the ef-  
15          fective date of the revisions to the Federal Acquisi-  
16          tion Regulation under subsection (b).

17          (b) IMPROVED NOTICE OF SMALL PURCHASE CON-  
18          TRACTING OPPORTUNITIES.—The Federal Acquisition  
19          Regulation shall be revised to—

20                 (1) provide prospective offerors, especially small  
21                 business concerns (including small business concerns  
22                 owned and controlled by socially and economically  
23                 disadvantaged individuals), with improved access to  
24                 information regarding small purchase procurement  
25                 opportunities meeting the standards of section 18 of

1 the Office of Federal Procurement Policy Act (41  
2 U.S.C. 416) through the use of techniques appro-  
3 priate for each buying activity (or class of buying ac-  
4 tivities), including to the extent practicable providing  
5 remote access to such information through electronic  
6 data interchange; and

7 (2) to ensure that—

8 (A) agencies comply with the requirements  
9 of section 8(a) of the Small Business Act (15  
10 U.S.C. 637(a)) and section 2323 of title 10,  
11 United States Code, in awarding any contract  
12 with a price exceeding \$25,000; and

13 (B) the authority under part 13.106(a)(1)  
14 of the Federal Acquisition Regulation (48  
15 C.F.R. 13.106(a)(1)), as in effect on May 19,  
16 1993, to make purchases without securing com-  
17 petitive quotations shall not apply to any pur-  
18 chases with a price exceeding \$2,500.

19 (c) PERFORMANCE TEST AND REPORT.—

20 (1) PERFORMANCE TEST.—The Comptroller  
21 General of the United States shall monitor and col-  
22 lect data on the results of the increase in the small  
23 purchase threshold made by the amendment made  
24 by subsection (a), to ascertain its effects on the par-  
25 ticipation of small business concerns (including small

1 business concerns owned and controlled by socially  
2 and economically disadvantaged individuals) in pro-  
3 curement awards of less than \$100,000 and the ben-  
4 efits and detriments, if any, to the buying activities  
5 of the various Executive agencies.

6 (2) DATA TO BE COLLECTED.—Data collected  
7 under paragraph (1) shall include data regarding  
8 whether the amendment made by subsection (a) has  
9 improved the acquisition process in terms of reduced  
10 paperwork, financial or other savings to the Govern-  
11 ment, and any increase in the number of contractors  
12 participating in the contracting process.

13 (3) PERIOD.—Data shall be collected for pur-  
14 poses of paragraph (1) during the period beginning  
15 with the first full fiscal year quarter after the effec-  
16 tive date of the amendment made by subsection (a)  
17 and ending September 30, 1995.

18 (4) REPORT.—By March 1, 1996, the Comp-  
19 troller General of the United States shall report to  
20 the Committee on Government Operations of the  
21 House of Representatives, the Committee on Govern-  
22 mental Affairs of the Senate, and the Committees on  
23 Small Business of the House of Representatives and  
24 the Senate on the effects of the increase in the small

1 purchase threshold made by the amendment made  
2 by subsection (a).

3 (d) FUNCTIONS OF ADMINISTRATOR FOR FEDERAL  
4 PROCUREMENT POLICY.—Section 6(d) of the Office of  
5 Federal Procurement Policy Act (41 U.S.C. 405(d)) is  
6 amended—

7 (1) in paragraph (7) by striking “and” after  
8 the semicolon at the end; and

9 (2) by redesignating paragraph (8) as para-  
10 graph (10) and inserting after paragraph (7) the  
11 following:

12 “(8) developing policies, in consultation with  
13 the Administrator of the Small Business Administra-  
14 tion, that ensure that small businesses and small  
15 businesses owned and controlled by socially and eco-  
16 nomically disadvantaged persons are provided with  
17 the maximum practicable opportunities to partici-  
18 pate in procurements that are conducted below the  
19 small purchase threshold; and

20 “(9) developing policies that will promote  
21 achievement of goals for participation by small busi-  
22 nesses and small businesses owned and controlled by  
23 socially and economically disadvantaged individ-  
24 uals.”.

1 (e) IMPLEMENTATION OF ELECTRONIC DATA INTER-  
2 CHANGE SYSTEMS FOR PROCUREMENT INFORMATION.—  
3 The Office of Federal Procurement Policy Act (41 U.S.C.  
4 401 et seq.) is further amended by adding after section  
5 29 (as added by section 502) the following:

6 **“SEC. 30. ELECTRONIC DATA INTERCHANGE SYSTEMS FOR**  
7 **PROCUREMENT INFORMATION.**

8 “(a) IN GENERAL.—The Administrator shall estab-  
9 lish a program for, and provide overall direction of policy  
10 and leadership in, the development, coordination, installa-  
11 tion, and completion of implementation by executive agen-  
12 cies, by not later than 5 years after the effective date of  
13 this section, of electronic data interchange systems for  
14 procurement information (in this section referred to as  
15 ‘systems’).

16 “(b) FUNCTIONS OF ADMINISTRATOR OF GENERAL  
17 SERVICES.—The Administrator of General Services  
18 shall—

19 “(1) establish acquisition and support programs  
20 to facilitate efficient and widespread implementation  
21 of systems by executive agencies;

22 “(2) assist the Director of the National Insti-  
23 tute of Standards and Technology in the develop-  
24 ment of standards for those systems;



1           “(3) ensure compliance with section 111 of the  
2           Federal Property and Administrative Services Act of  
3           1949 in the establishment of systems by executive  
4           agencies, including by limiting the scope of delega-  
5           tions under subsection (a) of that section;

6           “(4) submit to the Congress, on the date that  
7           is one year after the effective date of this section  
8           and on that date in each of the 5 years thereafter,  
9           a report on the overall progress by the executive  
10          branch and by each executive agency in establishing  
11          systems; and

12          “(5) coordinate with the Administrator to facili-  
13          tate the efficient and widespread implementation of  
14          systems by executive agencies.

15          “(c) ESTABLISHMENT OF SYSTEMS BY EXECUTIVE  
16          AGENCIES.—

17                 “(1) IN GENERAL.—The head of each executive  
18                 agency shall cooperate with the Administrator and  
19                 the Administrator of General Services to establish a  
20                 system for the agency.

21                 “(2) DESIGNATION OF PROGRAM MANAGER.—

22                         “(A) DESIGNATION.—The head of each ex-  
23                         ecutive agency shall designate a program man-  
24                         ager to establish a system for the agency and  
25                         otherwise implement this section.

1           “(B) FUNCTIONS.—A program manager  
2 designated under this paragraph for an execu-  
3 tive agency shall—

4           “(i) report directly to the senior pro-  
5 curement executive designated for the  
6 agency under section 16(3);

7           “(ii) be responsible for the timely and  
8 cost-effective establishment of a system for  
9 the agency that is responsive to the pro-  
10 curement needs of the agency, national  
11 business needs, and the public’s interest in  
12 open government; and

13           “(iii) in carrying out this section,  
14 comply with guidelines issued by the Ad-  
15 ministrator under this section and program  
16 directives issued by the Administrator of  
17 General Services under section 111 of the  
18 Federal Property and Administrative Serv-  
19 ices Act of 1949.

20           “(d) FUNCTIONS OF NATIONAL INSTITUTE OF  
21 STANDARDS AND TECHNOLOGY.—The Director of the Na-  
22 tional Institute of Standards and Technology shall—

23           “(1) issue standards for systems established  
24 under this section, including for the approval and  
25 certification of systems under subsection (f); and

1           “(2) establish tests to facilitate the aims of this  
2 section and support policies established by the Ad-  
3 ministrator under this section.

4           “(e) FUNCTIONS OF SMALL BUSINESS ADMINISTRA-  
5 TION.—The Administrator of the Small Business Adminis-  
6 tration shall be principally responsible for—

7           “(1) promotion of the use by small businesses  
8 of systems established by executive agencies; and

9           “(2) informing and providing training for small  
10 businesses with respect to those systems.

11          “(f) APPROVAL AND CERTIFICATION OF SYSTEMS.—

12           “(1) IN GENERAL.—The Administrator shall es-  
13 tablish standards and procedures for the submittal  
14 by executive agencies, and the review, approval, and  
15 certification by the Administrator for purposes of  
16 section 4(11)(B) within 90 days after the date of  
17 that submittal, of systems established by executive  
18 agencies.

19           “(2) REQUIREMENTS FOR APPROVAL AND CER-  
20 TIFICATION.—The Administrator may not approve  
21 and certify a system established by an executive  
22 agency unless the Administrator determines that the  
23 system—

24           “(A) provides widespread public notice of  
25 solicitations for bids and proposals issued by

1 the agency and of orders to be made by the  
2 agency below the small purchase threshold; and

3 “(B) allows private users of the system to  
4 electronically—

5 “(i) selectively access and review so-  
6 licitations and orders;

7 “(ii) respond to solicitations and no-  
8 tices of orders issued by the agency;

9 “(iii) receive orders from the agency;

10 “(iv) access information on awards of  
11 contracts; and

12 “(v) receive prompt bank card or elec-  
13 tronic funds transfer payment.”.

14 (f) TECHNICAL CORRECTION.—Section 18(d) of the  
15 Office of Federal Procurement Policy Act (41 U.S.C. 416)  
16 is amended by striking “(e)” in the first sentence and  
17 inserting “(a)”.

18 **SEC. 504. TEST PROGRAM.**

19 (a) IN GENERAL.—The Administrator for Federal  
20 Procurement Policy (in this section referred to as the “Ad-  
21 ministrator”) may conduct a program of tests of alter-  
22 native and innovative procurement procedures. To the ex-  
23 tent consistent with this section, such program shall be  
24 conducted consistent with section 15 of the Office of Fed-

1 eral Procurement Policy Act (41 U.S.C. 413). No more  
2 than 6 such tests shall be conducted under this authority.

3 (b) DESIGNATION OF AGENCIES.—Each test con-  
4 ducted pursuant to subsection (a) shall be limited to not  
5 more than 2 specific contracting activities in an agency  
6 designated by the Administrator. Each agency so des-  
7 ignated shall select the contracting activities participating  
8 in the test with the approval of the Administrator and  
9 shall designate a procurement testing official who shall be  
10 responsible for the conduct and evaluation of tests within  
11 that agency.

12 (c) TEST REQUIREMENTS.—Tests conducted under  
13 subsection (a)—

14 (1) shall be developed and structured by the  
15 Administrator, in coordination with agency senior  
16 procurement executives designated pursuant to sec-  
17 tion 16(e) of the Office of Federal Procurement Pol-  
18 icy Act (41 U.S.C. 414(3));

19 (2) shall be for a period of not greater than 4  
20 years;

21 (3) shall be limited to specific programs of  
22 agencies or specific acquisitions;

23 (4) may not include any test with a total esti-  
24 mated life-cycle cost to the Government greater than  
25 \$100,000,000;

1 (5) shall include—

2 (A) a test of simplified procurement proce-  
3 dures for acquisitions with an estimated annual  
4 total obligation of funds of \$500,000 or less by  
5 the National Aeronautics and Space Adminis-  
6 tration;

7 (B) a test of streamlined procedures for  
8 competition among interested sources partici-  
9 pating in the tailoring of a solicitation for the  
10 purchase of commercial products by at least one  
11 agency; and

12 (C) a test of commercial item acquisition  
13 procedures in which all evaluation factors and  
14 subfactors on which a contract award will be  
15 based are disclosed in the solicitation, identify-  
16 ing both the absolute and relative weight for  
17 each factor and each subfactor; and

18 (6) shall not include any procurement the cost  
19 of which is expected to exceed \$5,000,000 (including  
20 options).

21 (d) LIMITATION ON TOTAL VALUE OF CONTRACTS  
22 UNDER PROGRAM.—

23 (1) LIMITATION.—The Administrator shall en-  
24 sure that the total amount obligated under contracts

1 awarded pursuant to the program under this section  
2 does not exceed \$600,000,000.

3 (2) MONITORING.—The Administrator shall  
4 monitor the value of contracts awarded pursuant to  
5 the program under this section.

6 (3) PROHIBITION ON AWARDS IN EXCESS OF  
7 LIMIT.—No contract may be awarded under the pro-  
8 gram under this section if the award of the contract  
9 would result in obligation of more than  
10 \$600,000,000 under contracts under this section.

11 (e) PROCEDURES AUTHORIZED.—Tests conducted  
12 under this section may include tests of any of the following  
13 procedures:

14 (1) Publication of agency needs prior to draft-  
15 ing of a solicitation.

16 (2) Screening of sources and competition  
17 among capable vendors.

18 (3) Issuance of draft solicitations for comment.

19 (4) Streamlined solicitations, with a minimized  
20 number of evaluation factors and information re-  
21 quired from vendors, abbreviated periods for submis-  
22 sion of offers, and page limitations on offers.

23 (5) Limitation of source selection factors to—

24 (A) cost to the Government;

25 (B) past experience; and

1 (C) quality of the contents of the offer.

2 (6) Evaluation of proposals by small teams of  
3 highly qualified people, limited to 30 days.

4 (7) Competition among sources of preevaluated  
5 products.

6 (8) Alternative notice and publication require-  
7 ments.

8 (9) In not more than one of the tests, a process  
9 in which—

10 (A) the competitive process is initiated by  
11 a notice in the Commerce Business Daily syn-  
12 opsizing the needs of the executive agency con-  
13 ducting the test, in functional and performance  
14 terms, with other specifications provided for  
15 guidance only;

16 (B) the notice invites interested sources to  
17 submit information or samples showing their  
18 product's suitability for those needs (with price  
19 quotations) or, if appropriate, showing the  
20 sources' technical capability, past performance,  
21 product supportability, or other qualifications  
22 (with appropriate consideration to rates and  
23 other cost-related factors);

24 (C) contracting officials develop a request  
25 for proposals (including appropriate specifica-



1 tions and evaluation criteria) after reviewing  
2 the submittals made by interested sources and,  
3 if the officials determine necessary, after con-  
4 sultation with those sources; and

5 (D) the contract is awarded after a  
6 streamlined competition limited to all sources  
7 that timely provided product information in re-  
8 sponse to the notice or, if appropriate, to those  
9 sources determined most capable based on those  
10 qualification-based factors included in an invita-  
11 tion to submit information pursuant to sub-  
12 paragraph (B).

13 (f) TEST PLAN.—Not later than 60 days before im-  
14 plementing any test program under this section, the  
15 Administrator shall—

16 (1) provide a detailed test plan, including lists  
17 of any regulations that are to be waived, and any  
18 written determination under subsection (f)(1)(B) to  
19 the Committee on Government Operations of the  
20 House of Representatives and the Committee on  
21 Governmental Affairs of the Senate;

22 (2) provide a copy of the plan to the appro-  
23 priate authorizing committees of the House of Rep-  
24 resentatives and the Senate; and

1           (3) publish the plan in the Federal Register  
2 and provide an opportunity for public comment.

3           (g) WAIVER OF PROCUREMENT REGULATIONS.—

4           (1) IN GENERAL.—For purposes of a test con-  
5 ducted under subsection (a), the Administrator may  
6 waive—

7           (A) any provision of the Federal Acquisi-  
8 tion Regulation that is not required by statute;  
9 and

10           (B) any provision of the Federal Acquisi-  
11 tion Regulation that is required by a provision  
12 of law described in paragraph (2), the waiver of  
13 which the Administrator determines in writing  
14 to be necessary to conduct any test of any of  
15 the 9 procedures described in subsection (e).

16           (2) PROVISIONS OF LAW DESCRIBED.—The pro-  
17 visions of law referred to in paragraph (1) are the  
18 following:

19           (A) Section 3709 of the Revised Statutes  
20 (41 U.S.C. 5).

21           (B) Section 3710 of the Revised Statutes  
22 (41 U.S.C. 8).

23           (C) Section 3735 of the Revised Statutes  
24 (41 U.S.C. 13).

1 (D) Section 310 of the Federal Property  
2 and Administrative Services Act of 1949 (41  
3 U.S.C. 260).

4 (E) Section 303 of the Federal Property  
5 and Administrative Services Act of 1949 (41  
6 U.S.C. 253).

7 (F) Section 2304 of title 10, United States  
8 Code.

9 (G) Section 303A of the Federal Property  
10 and Administrative Services Act of 1949 (41  
11 U.S.C. 253a).

12 (H) Section 303B of the Federal Property  
13 and Administrative Services Act of 1949 (41  
14 U.S.C. 253b).

15 (I) Section 2305 of title 10, United States  
16 Code.

17 (J) Section 303C of the Federal Property  
18 and Administrative Services Act of 1949 (41  
19 U.S.C. 253c).

20 (K) Section 2319 of title 10, United States  
21 Code.

22 (L) Section 4(6) of the Office of Federal  
23 Procurement Policy Act (41 U.S.C. 403(6)).

24 (M) Section 18 of the Office of Federal  
25 Procurement Policy Act (41 U.S.C. 416).

1 (N) Sections 8 (e), (f), and (g) of the  
2 Small Business Act (15 U.S.C. 637 (e), (f), and  
3 (g)).

4 (h) REPORTS AND REVIEWS.—

5 (1) ADMINISTRATOR.—The Administrator shall  
6 report to the Congress on the results of each test  
7 conducted under subsection (a).

8 (2) COMPTROLLER GENERAL.—The Comptrol-  
9 ler General of the United States shall review each  
10 test conducted under subsection (a) and report to  
11 the Congress on each test and shall report annually  
12 to the Congress on the conduct of and results of all  
13 tests conducted under subsection (a).

14 (i) EXPIRATION OF AUTHORITY.—The authority to  
15 conduct tests under this section and to award contracts  
16 under such tests shall expire on October 1, 1997. Con-  
17 tracts entered prior to October 1, 1997, pursuant to a test  
18 shall remain in effect, notwithstanding the expiration of  
19 the authority to conduct the test under this section.

20 **SEC. 505. SINGLE AUDIT UNDER BROOKS ARCHITECT-ENGI-**  
21 **NEERS ACT.**

22 Section 904 of the Federal Property and Administra-  
23 tive Services Act of 1949 (40 U.S.C. 544) is amended by  
24 adding at the end the following:



1 ment Act of 1979 or any international agreement to which  
2 the United States is a party.

3 (c) PROHIBITION OF CONTRACTS WITH PERSONS  
4 FALSELY LABELING PRODUCTS AS MADE IN AMERICA.—  
5 If the Administrator of General Services determines that  
6 a person has been convicted of intentionally affixing a  
7 label bearing a “Made in America” inscription to any  
8 product sold in or shipped to the United States that is  
9 not made in America, the Administrator shall determine,  
10 not later than 90 days after determining that the person  
11 has been so convicted, whether the person should be  
12 debarred from contracting with the General Services Ad-  
13 ministration. If the Administrator determines that the  
14 person should not be debarred, the Administrator shall  
15 submit to Congress a report on such determination not  
16 later than 30 days after the determination is made.

17 (d) DEFINITIONS.—For purposes of this section—

18 (1) the term “Buy American Act” means title  
19 III of the Act entitled “An Act making appropria-  
20 tions for the Treasury and Post Office Departments  
21 for the fiscal year ending June 30, 1934, and for  
22 other purposes”, approved March 3, 1933 (41  
23 U.S.C. 10a et seq.); and

24 (2) the term “debar” means to exclude, pursu-  
25 ant to established administrative procedures, from

1 Government contracting and subcontracting for a  
2 specified period of time commensurate with the seri-  
3 ousness of the failure or offense or the inadequacy  
4 of performance.

5 **TITLE VI—PROVISIONS RELAT-**  
6 **ING TO GENERAL SERVICES**  
7 **ADMINISTRATION**

8 **SEC. 601. AUTHORIZATION OF FUNCTIONS AND ACTIVITIES**  
9 **UNDER THE FEDERAL PROPERTY AND AD-**  
10 **MINISTRATIVE SERVICES ACT OF 1949.**

11 Section 603(a) of the Federal Property and Adminis-  
12 trative Services Act of 1949 (40 U.S.C. 475) is amended  
13 to read as follows:

14 “(a) There are authorized to be appropriated such  
15 sums as may be necessary to carry out the provisions of  
16 this Act for each fiscal year through the fiscal year ending  
17 on September 30, 1996, including payment in advance,  
18 when authorized by the Administrator, for library mem-  
19 berships in societies whose publications are available to  
20 members only, or to members at a price lower than that  
21 charged to the general public. Nothing in this subsection  
22 shall affect authorizations of appropriations or appropria-  
23 tions set forth elsewhere in this Act.”.

1 **SEC. 602. REQUIREMENTS FOR APPOINTMENTS TO SENIOR**  
2 **POSITIONS IN GENERAL SERVICES ADMINIS-**  
3 **TRATION.**

4 (a) **IN GENERAL.**—Section 101 of the Federal Prop-  
5 erty and Administrative Services Act of 1949 (40 U.S.C.  
6 751) is amended by redesignating subsection (f) as sub-  
7 section (g) and by inserting after subsection (e) the follow-  
8 ing new subsection:

9 “(f) A person appointed as the Deputy Administrator  
10 of General Services or as the head of a principal organiza-  
11 tional unit of the General Services Administration shall,  
12 in addition to any other minimum qualifications, have sig-  
13 nificant previous management experience in government  
14 or the private sector in an area or areas directly related  
15 to the functions and responsibilities of the position to  
16 which that person is appointed.”.

17 (b) **EFFECTIVE DATE.**—The amendments made by  
18 subsection (a) shall not apply to any person in a position  
19 affected by such amendments on the date of the enactment  
20 of this Act.

○

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