

103<sup>RD</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1587**

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**AMENDMENT**

# ***In the House of Representatives, U. S.,***

*June 27, 1994.*

*Resolved*, That the bill from the Senate (S. 1587) entitled “An Act to revise and streamline the acquisition laws of the Federal Government, and for other purposes”, do pass with the following

## **AMENDMENT:**

Strike out all after the enacting clause, and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Federal Acquisition Im-*  
3 *provement Act of 1994”.*

4 ***SEC. 2. TABLE OF CONTENTS.***

5 *The table of contents for this Act is as follows:*

*Sec. 1. Short title.*

*Sec. 2. Table of contents.*

### ***TITLE I—CONTRACT FORMATION***

#### ***Subtitle A—Competition Statutes***

##### *PART I—ARMED SERVICES ACQUISITIONS*

##### *SUBPART A—COMPETITION REQUIREMENTS*

*Sec. 1001. References to Federal Acquisition Regulation.*

*Sec. 1002. Establishment or maintenance of alternative sources of supply.*

*Sec. 1003. Clarification of approval authority for use of procedures other than full and open competition.*

##### *SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD*

*Sec. 1011. Source selection factors.*

*Sec. 1012. Solicitation provision regarding evaluation of purchase options.*

*Sec. 1013. Prompt notice of award.*

*Sec. 1014. Post-award debriefings.*

*Sec. 1015. Protest file.*

*Sec. 1016. Agency decisions on protests.*

*Sec. 1017. Award of multiple contracts.*

## SUBPART C—KINDS OF CONTRACTS

*Sec. 1021. Repeal of requirement for secretarial determination regarding use of cost type or incentive contract.*

## SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

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

## PART II—CIVILIAN AGENCY ACQUISITIONS

## SUBPART A—COMPETITION REQUIREMENTS

*Sec. 1051. References to Federal Acquisition Regulation.*

*Sec. 1052. Establishment or maintenance of alternative sources of supply.*

*Sec. 1053. Clarification of approval authority for use of procedures other than full and open competition.*

## SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

*Sec. 1061. Solicitation, evaluation, and award.*

*Sec. 1062. Solicitation provision regarding evaluation of purchase options.*

*Sec. 1063. Prompt notice of award.*

*Sec. 1064. Post-award debriefings.*

*Sec. 1065. Protest file.*

*Sec. 1066. Agency decisions on protests.*

*Sec. 1067. Award of multiple contracts.*

## SUBPART C—KINDS OF CONTRACTS

*Sec. 1071. Repeal of agency head determination regarding use of cost type or incentive contract.*

*Sec. 1072. Multiyear contracting authority.*

*Sec. 1073. Severable services contracts crossing fiscal years.*

## PART III—ACQUISITIONS GENERALLY

*Sec. 1091. Policy regarding consideration of contractor past performance.*

*Sec. 1092. Repeal of requirement for annual report on competition.*

*Sec. 1093. Discouragement of nonstandard contract clauses.*

**Subtitle B—Truth in Negotiations**

## PART I—ARMED SERVICES ACQUISITIONS

*Sec. 1201. Stabilization of dollar threshold of applicability.*

*Sec. 1202. Exceptions to cost or pricing data requirements.*

*Sec. 1203. Right of United States to examine contractor records.*

*Sec. 1204. Consistency of time references.*

*Sec. 1205. Repeal of superseded provision.*

## PART II—CIVILIAN AGENCY ACQUISITIONS

*Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.*

*Sec. 1252. Repeal of obsolete provision.*

**Subtitle C—Research and Development**

*Sec. 1301. Competition requirement for awards of grants and contracts to non-profit organizations.*

**Subtitle D—Procurement Protests**

*PART I—PROTESTS TO THE COMPTROLLER GENERAL*

*Sec. 1401. Protest defined.*  
*Sec. 1402. Review of protests and effect on contracts pending decision.*  
*Sec. 1403. Decisions on protests.*  
*Sec. 1404. Regulations.*

*PART II—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING*

*Sec. 1431. Revocation of delegations of procurement authority.*  
*Sec. 1432. Authority of the General Services Administration Board of Contract Appeals.*  
*Sec. 1433. Periods for certain actions.*  
*Sec. 1434. Dismissals of protests.*  
*Sec. 1435. Award of costs.*  
*Sec. 1436. Dismissal agreements.*  
*Sec. 1437. Matters to be covered in regulations.*  
*Sec. 1438. Definition of protest.*  
*Sec. 1439. Oversight of acquisition of automatic data processing equipment by Federal agencies.*

**Subtitle E—Policy, Definitions, and Other Matters**

*PART I—ARMED SERVICES ACQUISITIONS*

*Sec. 1501. Congressional defense procurement policy.*  
*Sec. 1502. Definitions.*  
*Sec. 1503. Delegation of procurement functions.*  
*Sec. 1504. Determinations and decisions.*  
*Sec. 1505. Restrictions on undefinitized contractual actions.*  
*Sec. 1506. Repeal of requirement relating to production special tooling and production special test equipment.*  
*Sec. 1507. Regulations for bids.*

*PART II—CIVILIAN AGENCY ACQUISITIONS*

*Sec. 1551. Definitions.*  
*Sec. 1552. Delegation of procurement functions.*  
*Sec. 1553. Determinations and decisions.*  
*Sec. 1554. Repeals.*  
*Sec. 1555. Cooperative purchasing.*

**TITLE II—CONTRACT ADMINISTRATION**

**Subtitle A—Contract Payment**

*PART I—ARMED SERVICES ACQUISITIONS*

*Sec. 2001. Contract financing.*  
*Sec. 2002. Repeal of vouchering procedures section.*

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 2051. Contract financing.

PART III—ACQUISITIONS GENERALLY

Sec. 2061. Interest penalty on contract close-out lag-time.

**Subtitle B—Cost Principles**

PART I—ARMED SERVICES ACQUISITIONS

Sec. 2101. Allowable contract costs.

Sec. 2102. Repeal of authority for contract profit controls during emergency periods.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 2151. Allowable contract costs.

Sec. 2152. Revision of cost principle relating to entertainment, gift, and recreation costs for contractor employees.

PART III—ACQUISITIONS GENERALLY

Sec. 2161. Travel expenses of government contractors.

**Subtitle C—Audit and Access to Records**

PART I—ARMED SERVICES ACQUISITIONS

Sec. 2201. Consolidation and revision of authority to examine records of contractors.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 2251. Authority to examine records of contractors.

**Subtitle D—Cost Accounting Standards**

Sec. 2301. Repeal of obsolete deadline regarding procedural regulations for the Cost Accounting Standards Board.

**Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality**

Sec. 2401. Clarification of provision relating to quality control of certain spare parts.

Sec. 2402. Contractor guarantees regarding weapon systems.

**Subtitle F—Claims and Disputes**

Sec. 2501. Certification of contract claims.

Sec. 2502. Shipbuilding claims.

**TITLE III—MAJOR SYSTEMS AND SERVICE SPECIFIC STATUTES**

**Subtitle A—Major Systems Statutes**

Sec. 3001. Weapon development and procurement schedules.

Sec. 3002. Selected Acquisition Report requirement.

- Sec. 3003. Unit cost report requirement.*  
*Sec. 3004. Requirement for independent cost estimate and manpower estimate before development or production.*  
*Sec. 3005. Baseline description.*  
*Sec. 3006. Repeal of requirement for competitive prototyping for major programs.*  
*Sec. 3007. Repeal of requirement for competitive alternative sources for major programs.*

***Subtitle B—Testing Statutes***

- Sec. 3011. Authorization of less than full-up testing.*  
*Sec. 3012. Limitation on quantities to be procured for low-rate initial production.*  
*Sec. 3013. Operational test and evaluation of defense acquisition programs.*

***Subtitle C—Civil Reserve Air Fleet***

- Sec. 3021. Definition of contractor.*  
*Sec. 3022. Consolidation of provisions relating to contractual commitment of aircraft.*  
*Sec. 3023. Use of military installations by contractors.*

***Subtitle D—Miscellaneous***

- Sec. 3051. Regulations on procurement, production, warehousing, and supply distribution functions.*  
*Sec. 3052. Repeal of requirements regarding product evaluation activities.*  
*Sec. 3053. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.*  
*Sec. 3054. Repeal of application of Public Contracts Act to certain naval vessel contracts.*

***TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS***

***Subtitle A—Simplified Acquisition Threshold***

*PART I—ESTABLISHMENT OF THRESHOLD*

- Sec. 4001. Establishment of simplified acquisition threshold.*  
*Sec. 4002. Federal acquisition computer network architecture.*  
*Sec. 4003. Implementation in Armed Services.*  
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*PART II—SIMPLIFICATION OF PROCEDURES*

- Sec. 4011. Procedures for purchases below micro-purchase threshold.*  
*Sec. 4012. Procurement notice.*  
*Sec. 4013. GAO test and report on performance of simplified acquisition threshold.*

*PART III—INAPPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD*

*SUBPART A—GENERALLY*

- Sec. 4021. Inapplicability of future enacted procurement laws to contracts not exceeding the simplified acquisition threshold.*

## SUBPART B—ARMED SERVICES ACQUISITIONS

- Sec. 4031. *Inapplicability of certain provisions of law.*  
 Sec. 4032. *Conforming amendments relating to inapplicability of certain provisions of law.*

## SUBPART C—CIVILIAN AGENCY ACQUISITIONS

- Sec. 4041. *Inapplicability of certain provisions of law.*  
 Sec. 4042. *Conforming amendments relating to inapplicability of certain provisions of law.*

## SUBPART D—ACQUISITIONS GENERALLY

- Sec. 4051. *Conformance of certain procurement integrity requirements.*  
 Sec. 4052. *Inapplicability of the Drug-Free Workplace Act of 1988.*

## PART IV—CONFORMING AMENDMENTS

- Sec. 4071. *Armed Services acquisitions.*  
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 Sec. 4073. *Office of Federal Procurement Policy Act.*

## PART V—REVISION OF REGULATIONS

- Sec. 4081. *Revision required.*

**Subtitle B—Socioeconomic and Small Business Laws**

- Sec. 4101. *Small business provisions.*  
 Sec. 4102. *Payment protections for subcontractors and suppliers.*  
 Sec. 4103. *Extension of test program for negotiation of comprehensive small business subcontracting plans.*  
 Sec. 4104. *Small Business Procurement Advisory Council.*  
 Sec. 4105. *Maximum practicable opportunities for apprentices on Federal construction projects.*

**Subtitle C—Miscellaneous Acquisition Laws**

- Sec. 4151. *Restriction on use of noncompetitive procedures for procurement from a specified source.*  
 Sec. 4152. *Repeal of obsolete provision.*

**TITLE V—STANDARDS OF CONDUCT**

- Sec. 5001. *Contracting functions performed by Federal personnel.*  
 Sec. 5002. *Repeal of executed requirement for study and report.*  
 Sec. 5003. *Interests of Members of Congress.*  
 Sec. 5004. *Waiting period for significant changes proposed for acquisition regulations.*  
 Sec. 5005. *Repeal of superseded and obsolete laws.*

**TITLE VI—DEFENSE TRADE AND COOPERATION**

- Sec. 6001. *Exception to Buy American Act for micro-purchases.*  
 Sec. 6002. *Policy on purchase of foreign goods.*  
 Sec. 6003. *Consolidation of miscellaneous procurement limitations.*  
 Sec. 6004. *Repeal of obsolete and redundant provisions.*

## **TITLE VII—COMMERCIAL ITEMS**

### **Subtitle A—Definitions and Regulations**

- Sec. 7001. Definitions.*  
*Sec. 7002. Regulations on acquisition of commercial items.*

### **Subtitle B—Armed Services Acquisitions**

- Sec. 7101. Establishment of new chapter in title 10.*  
*Sec. 7102. Definitions.*  
*Sec. 7103. Preference for acquisition of commercial items.*  
*Sec. 7104. Exception to cost or pricing data requirements for commercial items.*  
*Sec. 7105. Principle of construction with future laws.*  
*Sec. 7106. Inapplicability of certain provisions of law.*  
*Sec. 7107. Conforming amendments relating to inapplicability of certain provisions of law.*

### **Subtitle C—Civilian Agency Acquisitions**

- Sec. 7201. Definitions.*  
*Sec. 7202. Preference for acquisition of commercial items.*  
*Sec. 7203. Exception to cost or pricing data requirements for commercial items.*  
*Sec. 7204. Principle of construction with future laws.*  
*Sec. 7205. Inapplicability of certain provisions of law.*  
*Sec. 7206. Conforming amendments relating to inapplicability of certain provisions of law.*

### **Subtitle D—Acquisitions Generally**

- Sec. 7301. Conforming amendment relating to inapplicability of certain provisions of law.*  
*Sec. 7302. Flexible deadlines for submission of offers of commercial items.*  
*Sec. 7303. Additional responsibilities for advocates for competition.*  
*Sec. 7304. Provisions not affected.*  
*Sec. 7305. Comptroller General review of Federal Government use of market research.*

## **TITLE VIII—MISCELLANEOUS PROVISIONS**

- Sec. 8001. Test program.*  
*Sec. 8002. Study of participation by certain small businesses in Federal procurement.*  
*Sec. 8003. Furtherance of contract goal for small disadvantaged businesses and certain institutions of higher education.*  
*Sec. 8004. Education and training.*  
*Sec. 8005. Department of Defense acquisition of intellectual property rights.*  
*Sec. 8006. Sense of Congress on negotiated rulemaking.*  
*Sec. 8007. Vendor and employee excellence awards.*  
*Sec. 8008. Codification of accounting requirement for contracted advisory and assistance services.*  
*Sec. 8009. Technical and clerical amendments.*

## **TITLE IX—EFFECTIVE DATES AND REGULATIONS**

- Sec. 9001. Effective dates.*  
*Sec. 9002. Regulations.*  
*Sec. 9003. Evaluation by the Comptroller General.*

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 amend-*  
8 *ed—*

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 “regula-*  
14 *tions modified” and all that follows through “note)”*  
15 *and inserting in lieu thereof “Federal Acquisition*  
16 *Regulation”.*

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

19 *(a) PROHIBITION ON USE OF CLASSES OF PURCHASES*  
20 *OR CONTRACTS.—Section 2304(b) of title 10, United States*  
21 *Code, is amended—*

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

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

1       “(2) A determination under paragraph (1) may not  
2 be made for a class of purchases or contracts.”; and

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

7       (b) *ADDITIONAL JUSTIFICATION FOR ESTABLISHING*  
8 *OR MAINTAINING ALTERNATIVE SOURCES.*—Section  
9 2304(b)(1) of such title is amended—

10           (1) by striking out “or” at the end of subpara-  
11 graph (B);

12           (2) by striking out the period at the end of sub-  
13 paragraph (C) and inserting in lieu thereof a semi-  
14 colon; and

15           (3) by adding at the end the following new sub-  
16 paragraphs:

17           “(D) would ensure the continuous availability of  
18 a reliable source of supply of such property or service;

19           “(E) would satisfy projected needs for such prop-  
20 erty or service determined on the basis of a history of  
21 high demand for the property or service; or

22           “(F) in the case of medical supplies, safety sup-  
23 plies, or emergency supplies, would satisfy a critical  
24 need for such supplies.”.

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

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

8 **Subpart B—Planning, Solicitation, Evaluation, and**  
9 **Award**

10 **SEC. 1011. SOURCE SELECTION FACTORS.**

11 *(a) CONTENT OF SOLICITATION.—Section 2305(a) of*  
12 *title 10, United States Code, is amended—*

13 *(1) in paragraph (2)—*

14 *(A) in subparagraph (A)(i)—*

15 *(i) by striking out “(and significant*  
16 *subfactors)” and inserting in lieu thereof*  
17 *“and significant subfactors”,*

18 *(ii) by inserting after “price-related*  
19 *factors” the following: “and subfactors”,*  
20 *and*

21 *(iii) by inserting after “nonprice-relat-*  
22 *ed factors” the following: “and subfactors”;*  
23 *and*

24 *(B) in subparagraph (B)(ii), by striking*  
25 *out subclause (I) and inserting in lieu thereof the*  
26 *following:*

1           “(I) either a statement that the proposals  
2           are intended to be evaluated with, and award  
3           made after, discussions with the offerors, or a  
4           statement that the proposals are intended to be  
5           evaluated, and award made, without discussions  
6           with the offerors (other than discussions con-  
7           ducted for the purpose of minor clarification)  
8           unless discussions are determined to be nec-  
9           essary; and”;

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

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

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

21           “(ii) shall include cost or price to the Federal  
22           Government as an evaluation factor that must be con-  
23           sidered in the evaluation of proposals; and

1           “(iii) shall disclose to offerors whether all evalua-  
2           tion factors other than cost or price, when combined,  
3           are—

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

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

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

10          “(B) The regulations implementing clause (iii) of sub-  
11          paragraph (A) may not define the terms ‘significantly more  
12          important’ and ‘significantly less important’ as specific  
13          numeric weights that would be applied uniformly to all so-  
14          licitations.

15          “(4) Nothing in this subsection prohibits an agency  
16          from—

17                   “(A) providing additional information in a so-  
18                  licitation, including numeric weights for all evalua-  
19                  tion factors and subfactors; or

20                   “(B) stating in a solicitation that award will be  
21                  made to the offeror that meets the solicitation’s man-  
22                  datory requirements at the lowest cost or price.”.

23          (b) *AUTHORITY TO APPLY AMENDMENTS EARLY.*—The  
24          head of an agency may apply the amendments made by  
25          this section to solicitations issued before the effective date

1 *specified in section 9001(a) and to contracts awarded pur-*  
2 *suant to those solicitations. The head of the agency shall*  
3 *publish in the Federal Register notice of any such earlier*  
4 *date of application at least 10 days before that date.*

5 **SEC. 1012. SOLICITATION PROVISION REGARDING EVALUA-**  
6 **TION OF PURCHASE OPTIONS.**

7 *Section 2305(a) of title 10, United States Code, as*  
8 *amended by section 1011, is further amended by adding at*  
9 *the end the following new paragraph:*

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

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

18 *(a) SEALED BID PROCEDURES.—Paragraph (3) of sec-*  
19 *tion 2305(b) of title 10, United States Code, is amended—*

20 *(1) in the last sentence, by striking out “trans-*  
21 *mitting written notice” and inserting in lieu thereof*  
22 *“transmitting, in writing or by electronic means, no-*  
23 *tice”; and*

24 *(2) by adding at the end the following: “Within*  
25 *three days after the date of contract award, the head*

1 of the agency shall notify, in writing or by electronic  
2 means, each bidder not awarded the contract that the  
3 contract has been awarded.”.

4 (b) *COMPETITIVE PROPOSALS PROCEDURES.*—Para-  
5 graph (4)(B) of such section is amended in the second sen-  
6 tence—

7 (1) by striking out “transmitting written notice”  
8 and inserting in lieu thereof “transmitting, in writ-  
9 ing or by electronic means, notice”; and

10 (2) by striking out “shall promptly notify” and  
11 inserting in lieu thereof “, within three days after the  
12 date of contract award, shall notify, in writing or by  
13 electronic means,”.

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

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

17 (1) by redesignating paragraph (5) as para-  
18 graph (6); and

19 (2) by inserting after paragraph (4) the follow-  
20 ing new paragraph (5):

21 “(5)(A) When a contract is awarded by an agency on  
22 the basis of competitive proposals, an unsuccessful offeror,  
23 upon written request received by the agency within five  
24 days after the date of receipt of notification of the contract  
25 award, shall be debriefed and furnished the basis for the

1 *selection decision and contract award. The head of the agen-*  
2 *cy shall debrief the offeror within, to the maximum extent*  
3 *practicable, five days after receipt of the request by the*  
4 *agency.*

5 *“(B) Such debriefing shall include, at a minimum, the*  
6 *following:*

7 *“(i) The agency’s evaluation of the significant*  
8 *weak or deficient factors in the offeror’s offer.*

9 *“(ii) The overall evaluated cost of the offer of the*  
10 *offeror awarded the contract and the overall evaluated*  
11 *cost of the offer of the debriefed offeror.*

12 *“(iii) The overall ranking of all offers and the*  
13 *total technical and cost scores of all offers.*

14 *“(iv) A summary of the rationale for the award.*

15 *“(v) In the case of an offer by the debriefed*  
16 *offeror that includes a commercial item that is an end*  
17 *item under the contract, the makes and models of*  
18 *similar commercial items included in the offer of the*  
19 *offeror awarded the contract.*

20 *“(vi) Reasonable responses to questions posed by*  
21 *the debriefed offeror as to whether source selection*  
22 *procedures set forth in the solicitation, applicable reg-*  
23 *ulations, and other applicable authorities were fol-*  
24 *lowed by the agency.*

1       “(C) The debriefing shall not include point-by-point  
2 comparisons of the debriefed offeror’s offer with other offers  
3 and shall not disclose any information that is exempt from  
4 disclosure under section 552 of title 5.

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

8       “(E) The contracting officer shall include a summary  
9 of the debriefing in the contract file.”.

10 **SEC. 1015. PROTEST FILE.**

11       Section 2305 of title 10, United States Code, is amend-  
12 ed by adding at the end the following new subsection:

13       “(e) *PROTEST FILE.*—(1) If, in the case of a solicita-  
14 tion for a contract issued by, or an award or proposed  
15 award of a contract by, the head of an agency, a protest  
16 is filed pursuant to the procedures in subchapter V of chap-  
17 ter 35 of title 31 and an actual or prospective offeror so  
18 requests, a file of the protest shall be established by the pro-  
19 curing activity and reasonable access shall be provided to  
20 actual or prospective offerors.

21       “(2) Information exempt from disclosure under section  
22 552 of title 5 may be redacted in a file established pursuant  
23 to paragraph (1) unless an applicable protective order pro-  
24 vides otherwise.

1       “(3) Regulations implementing this subsection shall be  
2 consistent with the regulations regarding the preparation  
3 and submission of an agency’s protest file (the so-called  
4 ‘rule 4 file’) for protests to the General Services Board of  
5 Contract Appeals under section 111 of the Federal Property  
6 and Administrative Services Act of 1949 (41 U.S.C. 759).”.

7       **SEC. 1016. AGENCY DECISIONS ON PROTESTS.**

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

11       “(f) DECISIONS ON PROTESTS.—If, in connection with  
12 a protest, the head of an agency determines that a solicita-  
13 tion, proposed award, or award does not comply with the  
14 requirements of law or regulation, the head of the agency—

15               “(1) may take any action set out in subpara-  
16 graphs (A) through (F) of subsection (b)(1) of section  
17 3554 of title 31; and

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

21       **SEC. 1017. AWARD OF MULTIPLE CONTRACTS.**

22       Section 2305 of title 10, United States Code, as amend-  
23 ed by section 1016, is further amended by adding at the  
24 end the following new subsection:

1       “(g) *AWARD OF MULTIPLE CONTRACTS.*—In procuring  
2 any supply or service using competitive procedures, the  
3 head of an agency may award more than one contract for  
4 the same supply or service in any case in which the head  
5 of the agency determines that it is in the best interests of  
6 the Federal Government to award those contracts for the  
7 purpose of maintaining a continuous source for the supply  
8 or service.”.

9                               ***Subpart C—Kinds of Contracts***

10 ***SEC. 1021. REPEAL OF REQUIREMENT FOR SECRETARIAL***  
11                               ***DETERMINATION REGARDING USE OF COST***  
12                               ***TYPE OR INCENTIVE CONTRACT.***

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

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

17 ***SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL REPORT***  
18                               ***BY ADVOCATES FOR COMPETITION.***

19       *Subsection (c) of section 2318 of title 10, United States*  
20 *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 Acquisi-*  
10                  *tion Regulation”; and*

11                  *(2) in subsection (g)(1), by striking out “regula-*  
12                  *tions modified” and all that follows through “of*  
13                  *1984,” and inserting in lieu thereof “Federal Acquisi-*  
14                  *tion Regulation”.*

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

17           *(a) PROHIBITION ON USE OF CLASSES OF PURCHASES*  
18   *OR CONTRACTS.—Section 303(b) of the Federal Property*  
19   *and Administrative Services Act of 1949 (41 U.S.C. 253(b))*  
20   *is amended—*

21                  *(1) by redesignating paragraphs (2) and (3) as*  
22                  *paragraphs (3) and (4), respectively;*

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

25                  *“(2) A determination under paragraph (1) may not*  
26   *be made for a class of purchases or contracts.”; and*

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

5           (b) *ADDITIONAL JUSTIFICATION FOR ESTABLISHING*  
6 *OR MAINTAINING ALTERNATIVE SOURCES.*—Section  
7 *303(b)(1) of the Federal Property and Administrative Serv-*  
8 *ices Act of 1949 (41 U.S.C. 253(b)(1)) is amended—*

9           (1) by striking out “or” at the end of subpara-  
10          graph (B);

11          (2) by striking out the period at the end of sub-  
12          paragraph (C) and inserting in lieu thereof a semi-  
13          colon; and

14          (3) by adding at the end the following new sub-  
15          paragraphs:

16               “(D) would ensure the continuous availability of  
17               a reliable source of supply of such property or service;

18               “(E) would satisfy projected needs for such prop-  
19               erty or service determined on the basis of a history of  
20               high demand for the property or service; or

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

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 **Subpart B—Planning, Solicitation, Evaluation, and**  
10 **Award**

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

12 *(a) CONTENT OF SOLICITATION.—Section 303A of the*  
13 *Federal Property and Administrative Services Act of 1949*  
14 *(41 U.S.C. 253a) is amended—*

15 *(1) in subsection (b)(1), by amending subpara-*  
16 *graph (A) to read as follows:*

17 *“(A) all significant factors and significant*  
18 *subfactors which the executive agency reasonably*  
19 *expects to consider in evaluating sealed bids (in-*  
20 *cluding price) or competitive proposals (includ-*  
21 *ing cost or price, cost- or price-related factors*  
22 *and subfactors, and noncost- or nonprice-related*  
23 *factors and subfactors); and”;*

24 *(2) in subsection (b)(1)(B), by inserting “and*  
25 *subfactors” after “factors”;*

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

3                   “(i) either a statement that the proposals  
4                   are intended to be evaluated with, and award  
5                   made after, discussions with the offerors, or a  
6                   statement that the proposals are intended to be  
7                   evaluated, and award made, without discussions  
8                   with the offerors (other than discussions con-  
9                   ducted for the purpose of minor clarification)  
10                  unless discussions are determined to be nec-  
11                  essary; and”;

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

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

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

23                           “(B) shall include cost or price to the Federal  
24                           Government as an evaluation factor that must be con-  
25                           sidered in the evaluation of proposals; and

1           “(C) shall disclose to offerors whether all evalua-  
2           tion factors other than cost or price, when combined,  
3           are—

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

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

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

10          “(2) The regulations implementing subparagraph (C)  
11 of paragraph (1) may not define the terms ‘significantly  
12 more important’ and ‘significantly less important’ as spe-  
13 cific numeric weights that would be applied uniformly to  
14 all solicitations.

15          “(3) Nothing in this subsection prohibits an executive  
16 agency from—

17                   “(A) providing additional information in a so-  
18           licitation, including numeric weights for all evalua-  
19           tion factors and subfactors; or

20                   “(B) stating in a solicitation that award will be  
21           made to the offeror that meets the solicitation’s man-  
22           datory requirements at the lowest cost or price.”.

23          (b) EVALUATION AND AWARD.—Section 303B of the  
24 Federal Property and Administrative Services Act of 1949  
25 (41 U.S.C. 253b) is amended—

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

3           (2) in subsection (c), by inserting “in accordance  
4 with subsection (a)” in the second sentence after  
5 “shall evaluate the bids”; and

6           (3) in subsection (d)—

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

9           “(1) An executive agency shall evaluate competitive  
10 proposals in accordance with subsection (a) and may  
11 award a contract—

12                 “(A) after discussions with the offerors, provided  
13 that written or oral discussions have been conducted  
14 with all responsible offerors who submit proposals  
15 within the competitive range; or

16                 “(B) based on the proposals received and without  
17 discussions with the offerors (other than discussions  
18 conducted for the purpose of minor clarification), pro-  
19 vided that, as required by section 303A(b)(2)(B)(i),  
20 the solicitation included a statement that proposals  
21 are intended to be evaluated, and award made, with-  
22 out discussions, unless discussions are determined to  
23 be necessary.”; and

1                   (B) by striking out paragraphs (2) and (3)  
2                   and by redesignating paragraph (4) as para-  
3                   graph (2).

4           (c) *AUTHORITY TO APPLY AMENDMENTS EARLY.*—The  
5   head of an executive agency may apply the amendments  
6   made by this section to solicitations issued before the effec-  
7   tive date specified in section 9001(a) and to contracts  
8   awarded pursuant to those solicitations. The head of the ex-  
9   ecutive agency shall publish in the Federal Register notice  
10   of any such earlier date of application at least 10 days be-  
11   fore that date.

12   **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**  
13                   **TION OF PURCHASE OPTIONS.**

14           Section 303A of the Federal Property and Administra-  
15   tive Services Act of 1949 (41 U.S.C. 253a), as amended by  
16   section 1061(a)(4), is further amended by adding at the end  
17   the following new subsection:

18           “(d) An executive agency, in issuing a solicitation for  
19   a contract to be awarded using sealed bid procedures, may  
20   not include in such solicitation a clause providing for the  
21   evaluation of prices under the contract for options to pur-  
22   chase additional supplies or services under the contract un-  
23   less the executive agency has determined that there is a rea-  
24   sonable likelihood that the options will be exercised.”.

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

2 (a) *SEALED BID PROCEDURES.*—Subsection (c) of sec-  
3 tion 303B of the Federal Property and Administrative  
4 Services Act of 1949 (41 U.S.C. 253b) is amended—

5 (1) in the last sentence, by striking out “trans-  
6 mitting written notice” and inserting in lieu thereof  
7 “transmitting, in writing or by electronic means, no-  
8 tice”; and

9 (2) by adding at the end the following: “Within  
10 3 days after the date of contract award, the executive  
11 agency shall notify, in writing or by electronic  
12 means, each bidder not awarded the contract that the  
13 contract has been awarded.”.

14 (b) *COMPETITIVE PROPOSALS PROCEDURES.*—Para-  
15 graph (2) of such section, as redesignated by section  
16 1061(b)(3)(B), is amended in the second sentence—

17 (1) by striking out “transmitting written notice”  
18 and inserting in lieu thereof “transmitting, in writ-  
19 ing or by electronic means, notice”; and

20 (2) by striking out “shall promptly notify” and  
21 inserting in lieu thereof “; within 3 days after the  
22 date of contract award, shall notify, in writing or by  
23 electronic means,”.

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

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

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

3           (2) by inserting after subsection (d) the following  
4           new subsection (e):

5           “(e)(1) When a contract is awarded by an executive  
6           agency on the basis of competitive proposals, an unsuccess-  
7           ful offeror, upon written request received by the executive  
8           agency within 5 days after the date of receipt of notification  
9           of the contract award, shall be debriefed and furnished the  
10          basis for the selection decision and contract award. The ex-  
11          ecutive agency shall debrief the offeror within, to the maxi-  
12          mum extent practicable, 5 days after receipt of the request  
13          by the executive agency.

14          “(2) Such debriefing shall include, at a minimum, the  
15          following:

16                 “(A) The executive agency’s evaluation of the sig-  
17                 nificant weak or deficient factors in the offeror’s offer.

18                 “(B) The overall evaluated cost of the offer of the  
19                 offeror awarded the contract and the overall evaluated  
20                 cost of the offer of the debriefed offeror.

21                 “(C) The overall ranking of all offers and the  
22                 total technical and cost scores of all offers.

23                 “(D) A summary of the rationale for the award.

24                 “(E) In the case of an offer by the debriefed  
25                 offeror that includes a commercial item that is an end

1     *item under the contract, the makes and models of*  
2     *similar commercial items included in the offer of the*  
3     *offeror awarded the contract.*

4             *“(F) Reasonable responses to questions posed by*  
5     *the debriefed offeror as to whether source selection*  
6     *procedures set forth in the solicitation, applicable reg-*  
7     *ulations, and other applicable authorities were fol-*  
8     *lowed by the executive agency.*

9             *“(3) The debriefing shall not include point-by-point*  
10    *comparisons of the debriefed offeror’s offer with other offers*  
11    *and shall not disclose any information that is exempt from*  
12    *disclosure under section 552 of title 5, United States Code.*

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

16            *“(5) The contracting officer shall include a summary*  
17    *of the debriefing in the contract file.”.*

18    **SEC. 1065. PROTEST FILE.**

19            *Section 303B of the Federal Property and Administra-*  
20    *tive Services Act of 1949 (41 U.S.C. 253b) is amended by*  
21    *adding at the end the following new subsection:*

22            *“(h) PROTEST FILE.—(1) If, in the case of a solicita-*  
23    *tion for a contract issued by, or an award or proposed*  
24    *award of a contract by, an agency head, a protest is filed*  
25    *pursuant to the procedures in subchapter V of chapter 35*

1 of title 31, United States Code, and an actual or prospective  
2 offeror so requests, a file of the protest shall be established  
3 by the procuring activity and reasonable access shall be pro-  
4 vided to actual or prospective offerors.

5 “(2) Information exempt from disclosure under section  
6 552 of title 5, United States Code, may be redacted in a  
7 file established pursuant to paragraph (1) unless an appli-  
8 cable protective order provides otherwise.

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

15 **SEC. 1066. AGENCY DECISIONS ON PROTESTS.**

16 Section 303B of the Federal Property and Administra-  
17 tive Services Act of 1949 (41 U.S.C. 253b), as amended by  
18 section 1065, is further amended by adding at the end the  
19 following new subsection:

20 “(i) DECISIONS ON PROTESTS.—If, in connection with  
21 a protest, an executive agency determines that a solicita-  
22 tion, proposed award, or award does not comply with the  
23 requirements of law or regulation, the executive agency—

1           “(1) may take any action set out in subpara-  
2           graphs (A) through (F) of subsection (b)(1) of section  
3           3554 of title 31, United States Code; and

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

7   **SEC. 1067. AWARD OF MULTIPLE CONTRACTS.**

8           Section 303B of the Federal Property and Administra-  
9           tive Services Act of 1949 (41 U.S.C. 253b), as amended by  
10          section 1066, is further amended by adding at the end the  
11          following new subsection:

12          “(j) AWARD OF MULTIPLE CONTRACTS.—In procuring  
13          any supply or service using competitive procedures, an ex-  
14          ecutive agency may award more than one contract for the  
15          same supply or service in any case in which the executive  
16          agency determines that it is in the best interests of the Fed-  
17          eral Government to award those contracts for the purpose  
18          of maintaining a continuous source for the supply or serv-  
19          ice.”.

1                   **Subpart C—Kinds of Contracts**

2   **SEC. 1071. REPEAL OF AGENCY HEAD DETERMINATION RE-**  
3                   **GARDING USE OF COST TYPE OR INCENTIVE**  
4                   **CONTRACT.**

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

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

9           *Title III of the Federal Property and Administrative*  
10   *Services Act of 1949 (41 U.S.C. 251 et seq.) is amended*  
11   *by inserting after section 304 the following new section:*

12   **“SEC. 304A. MULTIYEAR CONTRACTS.**

13           “(a) *AUTHORITY.—An executive agency may enter*  
14   *into a multiyear contract for the acquisition of property*  
15   *or services if—*

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

21                   “(2) *the executive agency determines that—*

22                           “(A) *the need for the property or services is*  
23                           *reasonably firm and continuing over the period*  
24                           *of the contract; and*

25                           “(B) *a multiyear contract will serve the best*  
26                           *interests of the United States by encouraging full*

1           *and open competition or promoting economy in*  
2           *administration, performance, and operation of*  
3           *the agency's programs; and*

4           “(3) *such contract is awarded on a fully com-*  
5           *petitive basis.*

6           “(b) *TERMINATION CLAUSE.—A multiyear contract*  
7           *entered into under the authority of this section shall include*  
8           *a clause that provides that the contract shall be terminated*  
9           *if funds are not made available for the continuation of such*  
10          *contract in any fiscal year covered by the contract.*  
11          *Amounts available for paying termination costs shall re-*  
12          *main available for such purpose until the costs associated*  
13          *with termination of the contract are paid.*

14          “(c) *CANCELLATION CEILING NOTICE.—Before any*  
15          *contract described in subsection (a) that contains a clause*  
16          *setting forth a cancellation ceiling in excess of \$10,000,000*  
17          *may be awarded, the executive agency shall give written no-*  
18          *tification of the proposed contract and of the proposed can-*  
19          *cellation ceiling for that contract to the Congress, and such*  
20          *contract may not then be awarded until the end of a period*  
21          *of 30 days beginning on the date of such notification.*

22          “(d) *MULTIYEAR CONTRACT DEFINED.—For the pur-*  
23          *poses of this section, a multiyear contract is a contract for*  
24          *the purchase of property or services for more than one, but*  
25          *not more than five, program years. Such a contract may*

1 *provide that performance under the contract during the sec-*  
 2 *ond and subsequent years of the contract is contingent upon*  
 3 *the appropriation of funds and (if it does so provide) may*  
 4 *provide for a cancellation payment to be made to the con-*  
 5 *tractor if such appropriations are not made.*

6       “(e) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*  
 7 *tion is intended to modify or affect any other provision of*  
 8 *law that authorizes multiyear contracts.”.*

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

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

14       **“SEC. 303H. SEVERABLE SERVICES CONTRACTS FOR PERI-**  
 15                                   **ODS CROSSING FISCAL YEARS.**

16       “(a) *AUTHORITY.*—*An executive agency may enter*  
 17 *into a severable contract for procurement of services for a*  
 18 *period that begins in one fiscal year and ends in the next*  
 19 *fiscal year if (without regard to any option to extend the*  
 20 *period of the contract) the contract period does not exceed*  
 21 *one year.*

22       “(b) *AVAILABILITY OF FUNDS.*—*To the extent provided*  
 23 *in appropriations Acts, funds obligated for a contract en-*  
 24 *tered into under the authority of subsection (a) shall remain*  
 25 *available until no longer needed to pay for such contract.*

1       “(c) *SEVERABLE CONTRACT DEFINED.*—In this sec-  
2 tion, the term ‘severable contract’ means a contract that  
3 contains a clause that makes the effectiveness of the contract  
4 for periods after the end of the fiscal year in which the per-  
5 formance of the contract begins subject to the availability  
6 of appropriations.”.

7               **PART III—ACQUISITIONS GENERALLY**

8       **SEC. 1091. POLICY REGARDING CONSIDERATION OF CON-**  
9               **TRACTOR PAST PERFORMANCE.**

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

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

14               (2) by striking out the period at the end of para-  
15 graph (13) and inserting in lieu thereof “; and”; and

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

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

21       (b) *GUIDANCE REQUIRED.*—Section 6 of the Office of  
22 Federal Procurement Policy Act (41 U.S.C. 405) is amend-  
23 ed by adding at the end the following:

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

1           “(A) Past contract performance of an offeror is  
2           one of the relevant factors that a contracting official  
3           of an executive agency should consider in awarding a  
4           contract.

5           “(B) It is appropriate for a contracting official  
6           to consider past contract performance of an offeror as  
7           an indicator of the likelihood that the offeror will suc-  
8           cessfully perform a contract to be awarded by that of-  
9           ficial.

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

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

20               “(B) policies for the collection and maintenance  
21               of information on past contract performance that, to  
22               the maximum extent practicable, facilitate automated  
23               collection, maintenance, and dissemination of infor-  
24               mation and provide for ease of collection, mainte-



1 **“SEC. 29. NONSTANDARD CONTRACT CLAUSES.**

2       *“The Federal Acquisition Regulatory Council shall*  
 3 *promulgate regulations to discourage the use of a non-*  
 4 *standard contract clause on a repetitive basis. The regula-*  
 5 *tions shall include provisions that—*

6           *“(1) clearly define nonstandard clauses; and*

7           *“(2) require prior approval for the use of a non-*  
 8 *standard clause on a repetitive basis by an official at*  
 9 *a level of responsibility above the contracting officer.”.*

10 ***Subtitle B—Truth in Negotiations***

11 ***PART I—ARMED SERVICES ACQUISITIONS***

12 ***SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-***  
 13 ***PLICABILITY.***

14       (a) *DOLLAR THRESHOLD STABILIZATION FOR*  
 15 *OFFERORS FOR PRIME CONTRACTS.—Paragraph (1)(A) of*  
 16 *section 2306a(a) of title 10, United States Code, is amend-*  
 17 *ed—*

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

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

22       (b) *ADJUSTMENT OF DOLLAR THRESHOLD.—Such sec-*  
 23 *tion is further amended by adding at the end the following*  
 24 *new paragraph:*

25           *“(7) The dollar amount in each of subparagraphs (A),*  
 26 *(B), (C), and (D) of paragraph (1) shall be adjusted on*

1 *October 1 of each year divisible by 5 to the equivalent*  
2 *amount in constant fiscal year 1993 dollars (rounded to*  
3 *the nearest \$10,000).”.*

4 **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**  
5 **QUIREMENTS.**

6 *(a) EXCEPTIONS.—Subsection (b) of section 2306a of*  
7 *title 10, United States Code, is amended to read as follows:*

8 *“(b) EXCEPTIONS.—(1) This section shall not be ap-*  
9 *plied to a contract or subcontract, or a modification to a*  
10 *contract or subcontract—*

11 *“(A) for which the price agreed upon is based*  
12 *on—*

13 *“(i) adequate price competition;*

14 *“(ii) established catalog or market prices of*  
15 *commercial items or of services regularly used*  
16 *for other than Federal Government purposes, as*  
17 *the case may be, that are sold in sufficient quan-*  
18 *tities to the general public; or*

19 *“(iii) prices set by law or regulation; or*

20 *“(B) in an exceptional case when the head of the*  
21 *procuring activity, without delegation, determines*  
22 *that the requirements of this section may be waived*  
23 *and justifies in writing the reasons for such deter-*  
24 *mination.*

1           “(2) *The Federal Acquisition Regulation (issued under*  
2 *section 25(c) of the Office of Federal Procurement Policy*  
3 *Act (41 U.S.C. 421(c)) shall provide clear standards for de-*  
4 *termining whether the exceptions provided in paragraph*  
5 *(1)(A) apply. In the case of the exception provided in para-*  
6 *graph (1)(A)(i), the regulations shall specify the criteria to*  
7 *be used to determine whether adequate price competition ex-*  
8 *ists. In the case of the exception provided in paragraph*  
9 *(1)(A)(ii), the regulations shall preclude the consideration*  
10 *of sales to the Federal Government, including the percentage*  
11 *of an item’s overall sales that are made to the Federal Gov-*  
12 *ernment, when determining whether the item has been sold*  
13 *in sufficient quantities to the public.”.*

14           (b) *LIMITATION ON AUTHORITY.—Subsection (c) of*  
15 *such section is amended to read as follows:*

16           “(c) *AUTHORITY TO REQUIRE COST OR PRICING DATA*  
17 *ON BELOW-THRESHOLD CONTRACTS.—When cost or pric-*  
18 *ing data are not required to be submitted by subsection (a),*  
19 *such data may nevertheless be required to be submitted by*  
20 *the head of the procuring activity, but only if the head of*  
21 *the procuring activity determines that such data are nec-*  
22 *essary for the evaluation by the agency of the reasonableness*  
23 *of the price of the contract or subcontract. In any case in*  
24 *which the head of the procuring activity requires such data*  
25 *to be submitted under this subsection, the head of the pro-*

1 *curing activity shall justify in writing the reason for such*  
2 *requirement. The head of the procuring activity may not*  
3 *require such data to be submitted under this subsection for*  
4 *any contract or subcontract, or modification to a contract*  
5 *or subcontract, covered by the exceptions in subsection (b).*  
6 *The head of the procuring activity may not delegate the*  
7 *functions under this subsection.”.*

8 **SEC. 1203. RIGHT OF UNITED STATES TO EXAMINE CON-**  
9 **TRACTOR RECORDS.**

10 *Subsection (f) of section 2306a of title 10, United*  
11 *States Code, is amended to read as follows:*

12 *“(f) RIGHT OF UNITED STATES TO EXAMINE CON-*  
13 *TRACTOR RECORDS.—For the purpose of evaluating the ac-*  
14 *curacy, completeness, and currency of cost or pricing data*  
15 *required to be submitted by this section, the head of an*  
16 *agency shall have the authority provided by section*  
17 *2313(a)(2) of this title.”.*

18 **SEC. 1204. CONSISTENCY OF TIME REFERENCES.**

19 *Section 2306a of title 10, United States Code, is*  
20 *amended—*

21 *(1) in subparagraphs (A)(ii) and (B)(ii) of sub-*  
22 *section (d)(4), by inserting “or, if applicable consist-*  
23 *ent with paragraph (1)(B), another date agreed upon*  
24 *between the parties” after “(or price of the modifica-*  
25 *tion)”;* and

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

5   **SEC. 1205. REPEAL OF SUPERSEDED PROVISION.**

6           Subsection (c) of section 803 of Public Law 101–510  
 7           (10 U.S.C. 2306a note) is repealed.

8           **PART II—CIVILIAN AGENCY ACQUISITIONS**

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

10                           **ENSURE UNIFORM TREATMENT OF COST OR**

11                           **PRICING DATA.**

12           Title III of the Federal Property and Administrative  
 13           Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

14                   (1) in section 304, by striking out subsection (d);

15                   and

16                   (2) by inserting after section 304A, as added by  
 17                   section 1072, the following new section:

18   **“SEC. 304B. COST OR PRICING DATA: TRUTH IN NEGOTIA-**

19                           **TIONS.**

20                   “(a) *REQUIRED COST OR PRICING DATA AND CERTIFI-*

21                   *CATION.—(1) An executive agency shall require offerors,*

22                   *contractors, and subcontractors to make cost or pricing data*

23                   *available as follows:*

24                   “(A) *An offeror for a prime contract under this*

25                   *title to be entered into using procedures other than*

1        *sealed-bid procedures shall be required to submit cost*  
2        *or pricing data before the award of a contract if—*

3                *“(i) in the case of a prime contract entered*  
4                *into after the date of the enactment of the Fed-*  
5                *eral Acquisition Improvement Act of 1994, the*  
6                *price of the contract to the United States is ex-*  
7                *pected to exceed \$500,000; and*

8                *“(ii) in the case of a prime contract entered*  
9                *into on or before the date of the enactment of the*  
10               *Federal Acquisition Improvement Act of 1994,*  
11               *the price of the contract to the United States is*  
12               *expected to exceed \$100,000.*

13               *“(B) The contractor for a prime contract under*  
14               *this chapter shall be required to submit cost or pric-*  
15               *ing data before the pricing of a change or modifica-*  
16               *tion to the contract if—*

17               *“(i) in the case of a change or modification*  
18               *made to a prime contract referred to in subpara-*  
19               *graph (A)(i), the price adjustment is expected to*  
20               *exceed \$500,000;*

21               *“(ii) in the case of a change or modification*  
22               *made to a prime contract that was entered into*  
23               *on or before the date of the enactment of the Fed-*  
24               *eral Acquisition Improvement Act of 1994, and*  
25               *that has been modified pursuant to paragraph*

1           (6), the price adjustment is expected to exceed  
2           \$500,000; and

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

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

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

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

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

1           “(D) The subcontractor for a subcontract covered  
2 by subparagraph (C) shall be required to submit cost  
3 or pricing data before the pricing of a change or  
4 modification to the subcontract if—

5                   “(i) in the case of a change or modification  
6 to a subcontract referred to in subparagraph  
7 (C)(i) or (C)(ii), the price adjustment is expected  
8 to exceed \$500,000; and

9                   “(ii) in the case of a change or modification  
10 to a subcontract referred to in subparagraph  
11 (C)(iii), the price adjustment is expected to ex-  
12 ceed \$100,000.

13           “(2) A person required, as an offeror, contractor, or  
14 subcontractor, to submit cost or pricing data under para-  
15 graph (1) (or required by the head of the procuring activity  
16 concerned to submit such data under subsection (c)) shall  
17 be required to certify that, to the best of the person’s knowl-  
18 edge and belief, the cost or pricing data submitted are accu-  
19 rate, complete, and current.

20           “(3) Cost or pricing data required to be submitted  
21 under paragraph (1) (or under subsection (c)), and a cer-  
22 tification required to be submitted under paragraph (2),  
23 shall be submitted—

24                   “(A) in the case of a submission by a prime con-  
25 tractor (or an offeror for a prime contract), to the

1        *contracting officer for the contract (or to a designated*  
2        *representative of the contracting officer); or*

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

6            *“(4) Except as provided under subsection (b), this sec-*  
7        *tion applies to contracts entered into by an agency head*  
8        *on behalf of a foreign government.*

9            *“(5) For purposes of paragraph (1)(C), a contractor*  
10       *or subcontractor granted a waiver under subsection (b)(2)*  
11       *shall be considered as having been required to make avail-*  
12       *able cost or pricing data under this section.*

13           *“(6) Upon the request of a contractor that was required*  
14       *to submit cost or pricing data under paragraph (1) in con-*  
15       *nection with a prime contract entered into on or before the*  
16       *date of the enactment of the Federal Acquisition Improve-*  
17       *ment Act of 1994, the agency head that entered into such*  
18       *contract shall modify the contract to reflect subparagraphs*  
19       *(B)(ii) and (C)(ii) of paragraph (1). All such modifications*  
20       *shall be made without requiring consideration.*

21           *“(7) The dollar amount in each of subparagraphs (A),*  
22       *(B), (C), and (D) of paragraph (1) shall be adjusted on*  
23       *October 1 of each year divisible by 5 to the equivalent*  
24       *amount in constant fiscal year 1993 dollars (rounded to*  
25       *the nearest \$10,000).*

1       “(b) *EXCEPTIONS.*—(1) *This section shall not be ap-*  
2 *plied to a contract or subcontract, or a modification to a*  
3 *contract or subcontract—*

4               “(A) *for which the price agreed upon is based*  
5 *on—*

6                       “(i) *adequate price competition;*

7                       “(ii) *established catalog or market prices of*  
8 *commercial items or of services regularly used*  
9 *for other than Federal Government purposes, as*  
10 *the case may be, that are sold in sufficient quan-*  
11 *tities to the general public; or*

12                      “(iii) *prices set by law or regulation; or*

13               “(B) *in an exceptional case when the head of the*  
14 *procuring activity, without delegation, determines*  
15 *that the requirements of this section may be waived*  
16 *and justifies in writing the reasons for such deter-*  
17 *mination.*

18       “(2) *The Federal Acquisition Regulation (issued under*  
19 *section 25(c) of the Office of Federal Procurement Policy*  
20 *Act (41 U.S.C. 421(c)) shall provide clear standards for de-*  
21 *termining whether the exceptions provided in paragraph*  
22 *(1)(A) apply. In the case of the exception provided in para-*  
23 *graph (1)(A)(i), the regulations shall specify the criteria to*  
24 *be used to determine whether adequate price competition ex-*  
25 *ists. In the case of the exception provided in paragraph*

1 (1)(A)(ii), the regulations shall preclude the consideration  
2 of sales to the Federal Government, including the percentage  
3 of an item's overall sales that are made to the Federal Gov-  
4 ernment, when determining whether the item has been sold  
5 in sufficient quantities to the public.

6       “(c) *AUTHORITY TO REQUIRE COST OR PRICING DATA*  
7 *ON BELOW-THRESHOLD CONTRACTS.*—When cost or pric-  
8 ing data are not required to be submitted by subsection (a),  
9 such data may nevertheless be required to be submitted by  
10 the head of the procuring activity, but only if the head of  
11 the procuring activity determines that such data are nec-  
12 essary for the evaluation by the agency of the reasonableness  
13 of the price of the contract or subcontract. In any case in  
14 which the head of the procuring activity requires such data  
15 to be submitted under this subsection, the head of the pro-  
16 curing activity shall justify in writing the reason for such  
17 requirement. The head of the procuring activity may not  
18 require such data to be submitted under this subsection for  
19 any contract or subcontract, or modification to a contract  
20 or subcontract, covered by the exceptions in subsection (b).  
21 The head of the procuring activity may not delegate the  
22 functions under this subsection.

23       “(d) *PRICE REDUCTIONS FOR DEFECTIVE COST OR*  
24 *PRICING DATA.*—(1)(A) A prime contract (or change or  
25 modification to a prime contract) under which a certificate

1 under subsection (a)(2) is required shall contain a provi-  
2 sion that the price of the contract to the United States, in-  
3 cluding profit or fee, shall be adjusted to exclude any sig-  
4 nificant amount by which it may be determined by the  
5 agency head that such price was increased because the con-  
6 tractor (or any subcontractor required to make available  
7 such a certificate) submitted defective cost or pricing data.

8       “(B) For the purposes of this section, defective cost or  
9 pricing data are cost or pricing data which, as of the date  
10 of agreement on the price of the contract (or another date  
11 agreed upon between the parties), were inaccurate, incom-  
12 plete, or noncurrent. If for purposes of the preceding sen-  
13 tence the parties agree upon a date other than the date of  
14 agreement on the price of the contract, the date agreed upon  
15 by the parties shall be as close to the date of agreement on  
16 the price of the contract as is practicable.

17       “(2) In determining for purposes of a contract price  
18 adjustment under a contract provision required by para-  
19 graph (1) whether, and to what extent, a contract price was  
20 increased because the contractor (or a subcontractor) sub-  
21 mitted defective cost or pricing data, it shall be a defense  
22 that the United States did not rely on the defective data  
23 submitted by the contractor or subcontractor.

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

4               “(A) *the price of the contract would not have*  
5 *been modified even if accurate, complete, and current*  
6 *cost or pricing data had been submitted by the con-*  
7 *tractor or subcontractor because the contractor or sub-*  
8 *contractor—*

9                       “(i) *was the sole source of the property or*  
10 *services procured; or*

11                       “(ii) *otherwise was in a superior bargain-*  
12 *ing position with respect to the property or serv-*  
13 *ices procured;*

14               “(B) *the contracting officer should have known*  
15 *that the cost and pricing data in issue were defective*  
16 *even though the contractor or subcontractor took no*  
17 *affirmative action to bring the character of the data*  
18 *to the attention of the contracting officer;*

19               “(C) *the contract was based on an agreement be-*  
20 *tween the contractor and the United States about the*  
21 *total cost of the contract and there was no agreement*  
22 *about the cost of each item procured under such con-*  
23 *tract; or*

24               “(D) *the prime contractor or subcontractor did*  
25 *not submit a certification of cost and pricing data re-*

1        *lating to the contract as required under subsection*  
2        *(a)(2).*

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

6                *“(i) the contractor certifies to the contracting of-*  
7                *ficer (or to a designated representative of the contract-*  
8                *ing officer) that, to the best of the contractor’s knowl-*  
9                *edge and belief, the contractor is entitled to the offset;*  
10              *and*

11              *“(ii) the contractor proves that the cost or pric-*  
12              *ing data were available before the date of agreement*  
13              *on the price of the contract (or price of the modifica-*  
14              *tion), or, if applicable consistent with paragraph*  
15              *(1)(B), another date agreed upon between the parties,*  
16              *and that the data were not submitted as specified in*  
17              *subsection (a)(3) before such date.*

18        *“(B) A contractor shall not be allowed to offset an*  
19        *amount otherwise authorized to be offset under subpara-*  
20        *graph (A) if—*

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

24              *“(ii) the United States proves that, had the cost*  
25              *or pricing data referred to in subparagraph (A)(ii)*

1        *been submitted to the United States before the date of*  
2        *agreement on the price of the contract (or price of the*  
3        *modification) or, if applicable under paragraph*  
4        *(1)(B), another date agreed upon between the parties,*  
5        *the submission of such cost or pricing data would not*  
6        *have resulted in an increase in that price in the*  
7        *amount to be offset.*

8        *“(e) INTEREST AND PENALTIES FOR CERTAIN OVER-*  
9        *PAYMENTS.—(1) If the United States makes an overpay-*  
10       *ment to a contractor under a contract with an executive*  
11       *agency subject to this section and the overpayment was due*  
12       *to the submission by the contractor of defective cost or pric-*  
13       *ing data, the contractor shall be liable to the United*  
14       *States—*

15                *“(A) for interest on the amount of such overpay-*  
16        *ment, to be computed—*

17                        *“(i) for the period beginning on the date the*  
18        *overpayment was made to the contractor and*  
19        *ending on the date the contractor repays the*  
20        *amount of such overpayment to the United*  
21        *States; and*

22                        *“(ii) at the current rate prescribed by the*  
23        *Secretary of the Treasury under section 6621 of*  
24        *the Internal Revenue Code of 1986; and*

1           “(B) if the submission of such defective data was  
2           a knowing submission, for an additional amount  
3           equal to the amount of the overpayment.

4           “(2) Any liability under this subsection of a contractor  
5           that submits cost or pricing data but refuses to submit the  
6           certification required by subsection (a)(2) with respect to  
7           the cost or pricing data shall not be affected by the refusal  
8           to submit such certification.

9           “(f) *RIGHT OF UNITED STATES TO EXAMINE CON-*  
10          *TRACTOR RECORDS.—For the purpose of evaluating the ac-*  
11          *curacy, completeness, and currency of cost or pricing data*  
12          *required to be submitted by this section, an executive agency*  
13          *shall have the authority provided by section 304C(a)(2).*

14          “(g) *COST OR PRICING DATA DEFINED.—In this sec-*  
15          *tion, the term ‘cost or pricing data’ means all facts that,*  
16          *as of the date of agreement on the price of a contract (or*  
17          *the price of a contract modification) or, if applicable con-*  
18          *sistent with subsection (d)(1)(B), another date agreed upon*  
19          *between the parties, a prudent buyer or seller would reason-*  
20          *ably expect to affect price negotiations significantly. Such*  
21          *term does not include information that is judgmental, but*  
22          *does include the factual information from which a judgment*  
23          *was derived.”.*

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

2 *Section 303E of the Federal Property and Administra-*  
 3 *tive Services Act of 1949 (41 U.S.C. 253e) is repealed.*

4 ***Subtitle C—Research and***  
 5 ***Development***

6 **SEC. 1301. COMPETITION REQUIREMENT FOR AWARDS OF**  
 7 **GRANTS AND CONTRACTS TO NONPROFIT OR-**  
 8 **GANIZATIONS.**

9 *Subsections (a) and (b) of section 2361 of title 10,*  
 10 *United States Code, are amended by inserting “or nonprofit*  
 11 *organization other than a federally funded research and de-*  
 12 *velopment center (FFRDC)” after “college or university”*  
 13 *each place it appears.*

14 ***Subtitle D—Procurement Protests***

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

16 ***GENERAL***

17 **SEC. 1401. PROTEST DEFINED.**

18 *(a) IN GENERAL.—Paragraph (1) of section 3551 of*  
 19 *title 31, United States Code, is amended to read as follows:*

20 *“(1) The term ‘protest’ means a written objection*  
 21 *by an interested party to any of the following:*

22 *“(A) A solicitation or other request by a*  
 23 *Federal agency for offers for a contract for the*  
 24 *procurement of property or services.*

25 *“(B) The cancellation of such a solicitation*  
 26 *or other request.*

1           “(C) An award or proposed award of such  
2 a contract.

3           “(D) A termination or cancellation of an  
4 award of such a contract, if the written objection  
5 contains an allegation that the termination or  
6 cancellation is based in whole or in part on im-  
7 proprieties concerning the award of the con-  
8 tract.”.

9           (b) *TECHNICAL AMENDMENTS.*—Section 3551 of such  
10 title is further amended—

11           (1) in paragraph (2)—

12           (A) by inserting “The term” after “(2)”;  
13 and

14           (B) by striking out “; and” and inserting  
15 in lieu thereof a period; and

16           (2) in paragraph (3), by inserting “The term”  
17 after “(3)”.

18 **SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CON-**

19 **TRACTS PENDING DECISION.**

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

22           (1) in subsection (b)—

23           (A) in paragraph (1), by striking out “one  
24 working day of” and inserting in lieu thereof

25 “one day after”; and

1           (B) in paragraph (2)—

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

5                 (ii) in subparagraph (C), by striking  
6                 out “10 working days from” and inserting  
7                 in lieu thereof “15 days after”; and

8           (2) in subsection (c)(3), by striking out “there-  
9           after” and inserting in lieu thereof “after the making  
10           of such finding”.

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

13                 “(d)(1) A contractor awarded a Federal agency con-  
14                 tract may, during the period described in paragraph (4),  
15                 begin performance of the contract and engage in any related  
16                 activities that result in obligations being incurred by the  
17                 United States under the contract unless the contracting offi-  
18                 cer responsible for the award of the contract withholds au-  
19                 thorization to proceed with performance of the contract.

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

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

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

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

6           “(i) the contracting officer may not authorize  
7           performance of the contract to begin while the protest  
8           is pending; or

9           “(ii) if contract performance was authorized in  
10          accordance with paragraph (2) before receipt of the  
11          notice, the contracting officer shall immediately direct  
12          the contractor to cease performance under the contract  
13          and to suspend any related activities that may result  
14          in additional obligations being incurred by the Unit-  
15          ed States under that contract.

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

19          “(C) The head of the procuring activity may authorize  
20          the performance of the contract (notwithstanding a protest  
21          of which the Federal agency has notice under this 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 of  
4           the Comptroller General concerning the protest;  
5           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 the debriefing  
15          date offered to an unsuccessful offeror for any debrief-  
16          ing that is requested and, when requested, is re-  
17          quired.”.

18   **SEC. 1403. DECISIONS ON PROTESTS.**

19          (a) PERIODS FOR CERTAIN ACTIONS.—Section  
20          3554(a) of title 31, United States Code, is amended—

21           (1) in paragraph (1), by striking out “90 work-  
22          ing days from” and inserting in lieu thereof “120  
23          days after”;

24           (2) in paragraph (2), by striking out “45 cal-  
25          endar days from” and inserting “60 days after”;

1           (3) by redesignating paragraph (3) as para-  
2           graph (4); and

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

5           “(3) An amendment to a protest that adds a new  
6           ground of protest, if timely raised, should be resolved, to  
7           the maximum extent practicable, within the time limit es-  
8           tablished under paragraph (1) of this subsection for final  
9           decision of the initial protest. If an amended protest cannot  
10          be resolved within such time limit, the Comptroller General  
11          may resolve the amended protest through the express option  
12          under paragraph (2) of this subsection.”.

13          (b) GAO RECOMMENDATIONS ON PROTESTS.—

14           (1) IMPLEMENTATION OF RECOMMENDATIONS.—  
15          Section 3554 of title 31, United States Code, is fur-  
16          ther amended in subsection (b) by adding at the end  
17          the following new paragraph:

18           “(3) If the Federal agency fails to implement fully the  
19          recommendations of the Comptroller General under this  
20          subsection with respect to a solicitation for a contract or  
21          an award or proposed award of a contract within 60 days  
22          after receiving the recommendations, the head of the procur-  
23          ing activity responsible for that contract shall report such  
24          failure to the Comptroller General not later than 5 days  
25          after the end of such 60-day period.”.

1           (2) *FEDERAL AGENCY PAYMENT OF COSTS.—*  
2           *Subsection (c) of such section is amended to read as*  
3           *follows:*

4           “(c)(1) *If the Comptroller General determines that a*  
5           *solicitation for a contract or a proposed award or the award*  
6           *of a contract does not comply with a statute or regulation,*  
7           *the Comptroller General may recommend that the Federal*  
8           *agency conducting the procurement pay to an appropriate*  
9           *interested party the costs of—*

10           “(A) *filing and pursuing the protest, including*  
11           *reasonable attorney’s fees and consultant and expert*  
12           *witness fees; and*

13           “(B) *bid and proposal preparation.*

14           “(2) *If the Comptroller General recommends under*  
15           *paragraph (1) that a Federal agency pay costs to an inter-*  
16           *ested party, the Federal agency shall—*

17           “(A) *pay the costs promptly out of funds avail-*  
18           *able to or for the use of the Federal agency; or*

19           “(B) *if the Federal agency does not make such*  
20           *payment, promptly report to the Comptroller General*  
21           *the reasons for the failure to follow the Comptroller*  
22           *General’s recommendation.*

23           “(3) *If the Comptroller General recommends under*  
24           *paragraph (1) that a Federal agency pay costs to an inter-*  
25           *ested party, the Federal agency and the interested party*

1 *shall attempt to reach an agreement on the amount of the*  
2 *costs to be paid. If the Federal agency and the interested*  
3 *party are unable to agree on the amount to be paid, the*  
4 *Comptroller General may, upon the request of the interested*  
5 *party, recommend to the Federal agency the amount of the*  
6 *costs that the Federal agency should pay.”.*

7           (3) *REPORT.—Subsection (e) of such section is*  
8           *amended to read as follows:*

9           “(e)(1) *In any case in which a Federal agency fails*  
10 *to implement fully a recommendation of the Comptroller*  
11 *General under subsection (b) or (c), the Comptroller General*  
12 *shall promptly submit a report on the matter to the Com-*  
13 *mittee on Governmental Affairs and the Committee on Ap-*  
14 *propriations of the Senate and to the Committee on Govern-*  
15 *ment Operations and the Committee on Appropriations of*  
16 *the House of Representatives. The report shall include—*

17           “(A) *a comprehensive review of the pertinent*  
18 *procurement, including the circumstances of the fail-*  
19 *ure of the Federal agency to implement a rec-*  
20 *ommendation of the Comptroller General; and*

21           “(B) *a recommendation regarding whether, in*  
22 *order to correct an inequity or to preserve the integ-*  
23 *egrity of the procurement process, the Congress should*  
24 *consider—*

25           “(i) *private relief legislation;*

1                   “(ii) legislative rescission or cancellation of  
2                   funds;

3                   “(iii) further investigation by the Congress;  
4                   or

5                   “(iv) other action.

6                   “(2) Not later than January 31 of each year, the  
7                   Comptroller General shall transmit to the Congress a report  
8                   containing a summary of each instance in which a Federal  
9                   agency did not fully implement a recommendation of the  
10                  Comptroller General under subsection (b) or (c) during the  
11                  preceding year. The report shall also describe each instance  
12                  in which a final decision in a protest was not rendered  
13                  within 120 days after the date the protest is submitted to  
14                  the Comptroller General.”.

15                  (4) REQUIREMENT FOR PAYMENT IN ACCORD-  
16                  ANCE WITH PRIOR GAO DETERMINATIONS.—Amounts  
17                  to which the Comptroller General declared an inter-  
18                  ested party to be entitled under section 3554 of title  
19                  31, United States Code, as in effect immediately be-  
20                  fore the date of the enactment of this Act, shall, if not  
21                  paid or otherwise satisfied by the Federal agency con-  
22                  cerned before such date, be paid promptly out of funds  
23                  available to or for the use of the Federal agency.

24                  (c) RECOVERY OF COSTS FOR FRIVOLOUS PRO-  
25                  TESTS.—Section 3554 of title 31, United States Code, is

1 further amended by adding at the end the following new  
2 subsection:

3       “(f) If the Comptroller General expressly finds that a  
4 protest or a portion of a protest is frivolous or has not been  
5 brought or pursued in good faith, the Comptroller may rec-  
6 ommend that the protester or other interested party who  
7 joins the protest be liable to the United States for payment  
8 of all or that portion of the United States costs, for which  
9 such a finding is made, of reviewing the protest, including  
10 the fees and other expenses (as defined in section  
11 2412(d)(2)(A) of title 28) incurred by the United States in  
12 defending the protest. The Federal Acquisition Regulation  
13 shall provide guidance under which the head of an agency  
14 may initiate action to obtain such costs, unless (A) special  
15 circumstances would make such payment unjust, or (B) the  
16 protester obtains documents or other information for the  
17 first time, after the protest is filed with the Comptroller  
18 General, which establishes that the protest or a portion is  
19 frivolous or has not been brought in good faith and the pro-  
20 tester then promptly withdraws the protest or portion of  
21 the protest.”.

22       (d) RESTRICTION ON ACCESS TO CERTAIN INFORMA-  
23 TION.—Section 3553(f) of title 31, United States Code, is  
24 amended—

25               (1) by inserting “(1)” after “(f)”; and

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

2           “(2)(A) The Comptroller General may issue protective  
3 orders which establish terms, conditions, and restrictions for  
4 the provision of any document to a person under paragraph  
5 (1), that prohibit or restrict the disclosure by the person  
6 of information described in subparagraph (C) that is con-  
7 tained in such a document.

8           “(B) The penalties specified under section 27(i) of the  
9 Office of Federal Procurement Policy Act shall apply to the  
10 disclosure of information described in subparagraph (C) in  
11 violation of a term, condition, or restriction in a protective  
12 order under this paragraph by a person that is subject to  
13 the protective order.

14           “(C) Information referred to in subparagraphs (A)  
15 and (B) is procurement sensitive information, trade secrets,  
16 or other proprietary or confidential research, development,  
17 or commercial information.

18           “(D) A protective order under this paragraph shall not  
19 be considered to authorize the withholding of any document  
20 or information from the Congress or an executive agency.”.

21 **SEC. 1404. REGULATIONS.**

22           (a) COMPUTATION OF PERIODS.—Section 3555 of title  
23 31, United States Code, is amended—

24           (1) by redesignating subsection (b) as subsection  
25           (d); and

1           (2) by inserting after subsection (a) the following  
2           new subsection (b):

3           “(b) The procedures shall provide that, in the computa-  
4           tion of any period described in this subchapter—

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

8           “(2) the last day after such act, event, or default  
9           be included, unless—

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

12           “(B) in the case of a filing of a paper at  
13           the General Accounting Office or a Federal agen-  
14           cy, such last day is a day on which weather or  
15           other conditions cause the closing of the General  
16           Accounting Office or Federal agency, in which  
17           event the next day that is not a Saturday, Sun-  
18           day, or legal holiday shall be included.”.

19           (b) *ELECTRONIC FILINGS AND DISSEMINATIONS.*—  
20           Such section, as amended by subsection (a), is further  
21           amended by inserting after subsection (b) the following new  
22           subsection:

23           “(c) The Comptroller General may prescribe proce-  
24           dures for the electronic filing and dissemination of docu-  
25           ments and information required under this subchapter. In

1 *prescribing such procedures, the Comptroller General shall*  
 2 *consider the ability of all parties to achieve electronic access*  
 3 *to such documents and records.”.*

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

7 **PART II—PROTESTS IN PROCUREMENTS OF**

8 **AUTOMATIC DATA PROCESSING**

9 **SEC. 1431. REVOCATION OF DELEGATIONS OF PROCURE-**  
 10 **MENT AUTHORITY.**

11 *Section 111(b)(3) of the Federal Property and Admin-*  
 12 *istrative Services Act of 1949 (40 U.S.C. 759(b)(3)) is*  
 13 *amended by inserting before the period at the end of the*  
 14 *third sentence the following: “, including the authority to*  
 15 *revoke a delegation of authority with respect to a particular*  
 16 *contract after award of the contract, except that the Admin-*  
 17 *istrator may revoke a delegation after the contract is*  
 18 *awarded only when there is a finding of a violation of law*  
 19 *or regulation in connection with the contract award.”.*

20 **SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMIN-**  
 21 **ISTRATION BOARD OF CONTRACT APPEALS.**

22 *The first sentence of section 111(f)(1) of the Federal*  
 23 *Property and Administrative Services Act of 1949 (40*  
 24 *U.S.C. 759(f)(1)) is amended to read as follows: “Upon re-*  
 25 *quest of an interested party in connection with any pro-*

1 *curement that is subject to this section (including any such*  
2 *procurement that is subject to delegation of procurement au-*  
3 *thority), the board of contract appeals of the General Serv-*  
4 *ices Administration (hereafter in this subsection referred to*  
5 *as the 'board') shall review, as provided in this subsection,*  
6 *any decision by a contracting officer that is alleged to vio-*  
7 *late a statute, a regulation, or the conditions of a delegation*  
8 *of procurement authority.”.*

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

10 (a) *SUSPENSION OF PROCUREMENT AUTHORITY.—(1)*  
11 *Section 111(f)(2)(B) of the Federal Property and Adminis-*  
12 *trative Services Act of 1949 (40 U.S.C. 759(f)(2)(B)) is*  
13 *amended—*

14 (A) *by redesignating clauses (i) and (ii) as*  
15 *subclauses (I) and (II), respectively;*

16 (B) *by inserting “(i)” after “(B)”;* and

17 (C) *by adding at the end the following:*

18 “(ii) *A suspension under this subparagraph shall not*  
19 *preclude the Federal agency concerned from continuing the*  
20 *procurement process up to but not including award of the*  
21 *contract if the Board determines such action is in the best*  
22 *interests of the United States.”.*

23 (2) *Section 111(f) of such Act (40 U.S.C. 759(f)) is*  
24 *amended in paragraph (3) by striking out subparagraph*  
25 *(A) and inserting in lieu thereof the following:*

1       “(A)(i) If, with respect to an award of a contract, the  
2 board receives notice of a protest under this subsection with-  
3 in the period described in clause (ii), the board shall, at  
4 the request of an interested party, hold a hearing to deter-  
5 mine whether the board should suspend the procurement au-  
6 thority of the Administrator or the Administrator’s delega-  
7 tion of procurement authority for the protested procurement  
8 on an interim basis until the board can decide the protest.

9       “(ii) The period referred to in clause (i) is the period  
10 beginning on the date on which the contract is awarded and  
11 ending at the end of the later of—

12           “(I) the tenth day after the date of contract  
13 award; or

14           “(II) the fifth day after the debriefing date of-  
15 fered to an unsuccessful offeror for any debriefing that  
16 is requested and, when requested, is required.

17       “(iii) The board shall hold the requested hearing with-  
18 in 5 days after the date of the filing of the protest.”.

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

21           (1) by striking out “45 working days” and in-  
22 sserting in lieu thereof “65 days”; and

23           (2) by adding at the end the following: “An  
24 amendment which adds a new ground of protest  
25 should be resolved, to the maximum extent prac-

1        *licable, within the time limits established for resolu-*  
2        *tion of the initial protest.”.*

3        **SEC. 1434. DISMISSALS OF PROTESTS.**

4        *Section 111(f)(4) of the Federal Property and Admin-*  
5        *istrative Services Act of 1949 (40 U.S.C. 759(f)(4)) is*  
6        *amended by striking out subparagraph (C) and inserting*  
7        *in lieu thereof the following:*

8            *“(C) The board may dismiss a protest that the board*  
9        *determines—*

10            *“(i) is frivolous;*

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

12            *“(iii) does not state on its face a valid basis for*  
13        *protest.*

14            *“(D) The board may impose appropriate procedural*  
15        *sanctions, including dismissal of the protest, if the board*  
16        *determines that the board’s process has been willfully abused*  
17        *during the course of a protest.*

18            *“(E) If the board makes a determination under sub-*  
19        *paragraph (C), the board may impose appropriate sanc-*  
20        *tions. Such sanctions may include imposition of liability*  
21        *on the protester, or other interested party who joins the pro-*  
22        *test, for payment to the United States of all or that portion*  
23        *of the United States costs, for which such a finding is made,*  
24        *of reviewing the protest, including the fees and other ex-*  
25        *penses (as defined in section 2412(d)(2)(A) of title 28, Unit-*

1 *ed States Code) incurred by the United States in defending*  
2 *the protest. The Federal Acquisition Regulation shall pro-*  
3 *vide guidance under which the head of an agency may initi-*  
4 *ate action to obtain such costs, unless (i) special cir-*  
5 *cumstances would make such payment unjust, or (ii) the*  
6 *protester obtains documents or other information for the*  
7 *first time, after the protest is filed with the board, which*  
8 *establishes that the protest or a portion is frivolous or has*  
9 *been brought in bad faith and the protester then promptly*  
10 *withdraws the protest or portion of the protest.”.*

11 **SEC. 1435. AWARD OF COSTS.**

12 *(a) AWARD.—Section 111(f)(5) of the Federal Property*  
13 *and Administration Services Act of 1949 (40 U.S.C.*  
14 *759(f)(5)) is amended by striking out subparagraph (C)*  
15 *and inserting in lieu thereof the following:*

16 *“(C) Whenever the board makes such a determination,*  
17 *it may, in accordance with section 1304 of title 31, United*  
18 *States Code, further declare an appropriate prevailing*  
19 *party to be entitled to the cost of filing and pursuing the*  
20 *protest (including reasonable attorney’s fees and consultant*  
21 *and expert witness fees), and bid and proposal prepara-*  
22 *tion.”.*

23 *(b) DEFINITION OF PREVAILING PARTY.—Section*  
24 *111(f)(9) of such Act (40 U.S.C. 759(f)(9)) is amended by*  
25 *adding at the end the following:*

1           “(C) The term ‘prevailing party’, with respect to  
2           a determination of the board under paragraph (5)(B)  
3           that a challenged action of a Federal agency violates  
4           a statute or regulation or the conditions of a delega-  
5           tion of procurement authority issued pursuant to this  
6           section, means a party that demonstrated such viola-  
7           tion.”.

8           **SEC. 1436. DISMISSAL AGREEMENTS.**

9           Section 111(f)(5) of the Federal Property and Admin-  
10          istrative Services Act of 1949 (40 U.S.C. 759(f)(5)), as  
11          amended by section 1435, is further amended by adding at  
12          the end the following new subparagraphs:

13          “(D) Any agreement that provides for the dismissal  
14          of a protest and involves a direct or indirect expenditure  
15          of appropriated funds shall be submitted to the board and  
16          shall be made a part of the public record (subject to any  
17          protective order considered appropriate by the board) before  
18          dismissal of the protest. If a Federal agency is a party to  
19          a settlement agreement, the submission of the agreement  
20          submitted to the board shall include a memorandum, signed  
21          by the contracting officer concerned, that describes in detail  
22          the procurement, the grounds for protest, the Federal Gov-  
23          ernment’s position regarding the grounds for protest, the  
24          terms of the settlement, and the agency’s position regarding

1 *the propriety of the award or proposed award of the con-*  
2 *tract at issue in the protest.*

3       “(E) Payment of amounts due from an agency under  
4 *subparagraph (C) or under the terms of a settlement agree-*  
5 *ment under subparagraph (D) shall be made from the ap-*  
6 *propriation made by section 1304 of title 31, United States*  
7 *Code, for the payment of judgments. The Federal agency*  
8 *concerned shall reimburse that appropriation account out*  
9 *of funds available for the procurement.”.*

10 **SEC. 1437. MATTERS TO BE COVERED IN REGULATIONS.**

11       *Section 111(f) of the Federal Property and Adminis-*  
12 *trative Services Act of 1949 (40 U.S.C. 759(f)) is further*  
13 *amended—*

14             (1) *by inserting after paragraph (6) the follow-*  
15 *ing:*

16       “(7)(A) *The board shall adopt and issue such rules and*  
17 *procedures as may be necessary to the expeditious disposi-*  
18 *tion of protests filed under the authority of this subsection.*

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

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

24             “(ii) *the last day after such act, event, or default*  
25 *be included, unless—*

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

3           “(II) in the case of a filing of a paper at  
4           the board, such last day is a day on which  
5           weather or other conditions make the board or  
6           Federal agency inaccessible, in which event the  
7           next day that is not a Saturday, Sunday, or  
8           legal holiday shall be included.

9           “(C) The procedures may provide for electronic filing  
10          and dissemination of documents and information required  
11          under this subsection and in so providing shall consider the  
12          ability of all parties to achieve electronic access to such doc-  
13          uments and records.”; and

14                 (2) by striking out paragraph (8).

15         **SEC. 1438. DEFINITION OF PROTEST.**

16                 Section 111(f)(9) of the Federal Property and Admin-  
17          istrative Services Act of 1949 (40 U.S.C. 759(f)(9)) is  
18          amended—

19                 (1) by amending subparagraph (A) to read as  
20          follows:

21                 “(A) The term ‘protest’ means a written objec-  
22          tion by an interested party to any of the following:

23                         “(i) A solicitation or other request by a  
24                         Federal agency for offers for a contract for the  
25                         procurement of property or services.

1           “(ii) The cancellation of such a solicitation  
2           or other request.

3           “(iii) An award or proposed award of such  
4           a contract.

5           “(iv) A termination or cancellation of an  
6           award of such a contract, if the written objection  
7           contains an allegation that the termination or  
8           cancellation is based in whole or in part on im-  
9           proprieties concerning the award of the con-  
10          tract.”; and

11          (2) by capitalizing the first letter of the first  
12          word in subparagraph (B).

13   **SEC. 1439. OVERSIGHT OF ACQUISITION OF AUTOMATIC**  
14                   **DATA PROCESSING EQUIPMENT BY FEDERAL**  
15                   **AGENCIES.**

16          Section 111 of the Federal Property and Administra-  
17          tive Services Act of 1949 (40 U.S.C. 759) is amended by  
18          adding at the end the following new subsection:

19          “(h) **DATA COLLECTION.**—(1) The Administrator shall  
20          collect and compile data regarding the procurement of auto-  
21          matic data processing equipment under this section. The  
22          data collected and compiled shall include, at a minimum,  
23          with regard to each procurement the following:

24                  “(A) The procuring agency.

25                  “(B) The contractor.

1           “(C) *The automatic data processing equipment*  
2           *and services procured.*

3           “(D) *The manufacturer of the equipment pro-*  
4           *cured.*

5           “(E) *The amount of the contract, to the extent*  
6           *that the amount is not proprietary information.*

7           “(F) *The type of contract used.*

8           “(G) *The extent of competition for award.*

9           “(H) *Compatibility restrictions.*

10           “(I) *Significant modifications of the con-*  
11           *tract.*

12           “(J) *Contract price, to the extent that the*  
13           *price is not proprietary information.*

14           “(2) *The head of each Federal agency shall report to*  
15           *the Administrator in accordance with regulations issued by*  
16           *the Administrator all information that the Administrator*  
17           *determines necessary in order to satisfy the requirements*  
18           *in paragraph (1).*

19           “(3) *The Administrator—*

20                   “(A) *shall carry out a systematic, periodic*  
21                   *review of information received under this sub-*  
22                   *section;*

23                   “(B) *shall use such information, as appro-*  
24                   *priate, to determine the compliance of Federal*

1           *agencies with the requirements of this section;*  
2           *and*

3                   *“(C) may take appropriate corrective action*  
4                   *regarding an agency’s authority to lease and*  
5                   *purchase automatic data processing equipment*  
6                   *upon any substantial failure by the head of the*  
7                   *agency to report to the Administrator in accord-*  
8                   *ance with this subsection.*

9           *“(4) The Administrator shall take appropriate correc-*  
10           *tive action upon failure of a Federal agency to comply with*  
11           *the terms of any delegation of authority to lease or purchase*  
12           *automatic data processing equipment or failure to comply*  
13           *with any applicable law or regulation.*

14           *“(5) The Administrator shall require in the regulations*  
15           *implementing this subsection that (A) data collected pursu-*  
16           *ant to this subsection be drawn from existing Federal agen-*  
17           *cy information; and (B) no new or additional information*  
18           *reporting requirements may be imposed on offerors or con-*  
19           *tractors to collect such data.”.*

1 **Subtitle E—Policy, Definitions, and**  
2 **Other Matters**

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **SEC. 1501. CONGRESSIONAL DEFENSE PROCUREMENT POL-**  
5 **ICY.**

6 *Section 2301 of title 10, United States Code, is amend-*  
7 *ed to read as follows:*

8 **“§ 2301. Congressional defense procurement policy**

9 *“(a) The Congress finds that in order to ensure na-*  
10 *tional defense preparedness; conserve fiscal resources; en-*  
11 *hance science and technology, research and development,*  
12 *and production capability; provide for continued develop-*  
13 *ment and preservation of an efficient and responsive defense*  
14 *industrial base; and ensure the financial and ethical integ-*  
15 *riety of defense procurement programs, it is in the interest*  
16 *of the United States that property and services be acquired*  
17 *for the Department of Defense in the most timely, economic,*  
18 *and efficient manner consistent with achieving an optimum*  
19 *balance among efficient processes, full and open access to*  
20 *the procurement system, and sound implementation of so-*  
21 *cioeconomic policies. It is therefore the policy of Congress*  
22 *that—*

23 *“(1) full and open competitive procedures shall*  
24 *be used by the Department of Defense in accordance*  
25 *with the requirements of this chapter;*

1           “(2) to the maximum extent practicable, the De-  
2           partment of Defense shall acquire commercial items to  
3           meet its needs and shall require prime contractors  
4           and subcontractors, at all levels, which furnish other  
5           than commercial items, to incorporate to the maxi-  
6           mum extent practicable commercial items as compo-  
7           nents of items being supplied to the Department;

8           “(3) when commercial items and components are  
9           not available, practicable, or cost effective, the De-  
10          partment of Defense shall acquire, and shall require  
11          prime contractors and subcontractors to incorporate,  
12          nondevelopmental items and components to the maxi-  
13          mum extent practicable;

14          “(4) property and services for the Department of  
15          Defense may be acquired by any kind of contract,  
16          other than cost-plus-a-percentage-of-cost contracts, but  
17          including multiyear contracts, that will promote the  
18          interest of the United States and will provide for ap-  
19          propriate allocation of risk between the Government  
20          and the contractor with due regard to the nature of  
21          the property or services to be acquired;

22          “(5) contracts, when appropriate, shall provide  
23          incentives to contractors to improve productivity  
24          through investment in capital facilities, equipment,

1 *flexible manufacturing processes, and advanced and*  
2 *dual-use technology;*

3 *“(6) contracts for advance procurement of com-*  
4 *ponents, parts, and materials necessary for manufac-*  
5 *ture or for logistics support of a weapon system*  
6 *should, if practicable, be entered into in a manner to*  
7 *achieve economic-lot purchases and more efficient pro-*  
8 *duction rates;*

9 *“(7) procurement protests and disputes shall be*  
10 *fairly and expeditiously resolved through uniform in-*  
11 *terpretation of relevant laws and regulations;*

12 *“(8) the head of an agency shall use advance*  
13 *procurement planning and market research and de-*  
14 *velop contract requirements in such a manner as is*  
15 *necessary to obtain full and open competition with*  
16 *due regard to the nature of the property or services*  
17 *to be acquired, but may restrict competitions to sup-*  
18 *pliers of commercial items to foster accomplishment of*  
19 *this objective; and*

20 *“(9) the head of an agency shall develop and*  
21 *maintain an acquisition career management program*  
22 *to ensure a professional acquisition work force in ac-*  
23 *cordance with the requirements of chapter 87 of this*  
24 *title.*

1       “(b) Further, it is the policy of Congress that procure-  
2       ment policies and procedures for the agencies named in sec-  
3       tion 2303 of this title shall, in accordance with the require-  
4       ments of this title—

5               “(1) be issued in accordance with and conform  
6       to the requirements of sections 22 and 25 of the Office  
7       of Federal Procurement Policy Act (41 U.S.C. 418b  
8       and 421);

9               “(2) promote and implement the Congressional  
10       policies in subsection (a) and in section 2 of the Of-  
11       fice of Federal Procurement Policy Act (41 U.S.C.  
12       401);

13              “(3) be implemented to support the requirements  
14       of such agencies in time of war or national emergency  
15       as well as in peacetime;

16              “(4) promote responsiveness of the procurement  
17       system to agency needs by—

18                      “(A) simplifying and streamlining procure-  
19       ment processes, and

20                      “(B) providing incentives to encourage con-  
21       tractors to take actions and make recommenda-  
22       tions that would reduce the costs of property or  
23       services to be acquired;

24              “(5) facilitate the acquisition of commercial  
25       items and commercial components at or based on

1       *commercial market prices, without requiring contrac-*  
2       *tors to change their business practices; and*

3             *“(6) promote the acquisition and use of commer-*  
4       *cial items, commercial components, and*  
5       *nondevelopmental items by requiring descriptions of*  
6       *agency requirements, whenever practicable, in terms*  
7       *of functions to be performed or performance required.*

8             *“(c) Further, it is the policy of Congress that purchases*  
9       *and contracts entered into under this chapter should be*  
10       *placed with small business concerns and concerns that are*  
11       *small disadvantaged businesses in conformance with section*  
12       *2323 of this title and subsection (g) of section 15 of the*  
13       *Small Business Act (15 U.S.C. 644).*

14            *“(d) It is also the policy of Congress that qualified*  
15       *nonprofit agencies for the blind or severely handicapped (as*  
16       *defined in section 2410d(b) of this title) shall be afforded*  
17       *the maximum practicable opportunity to provide approved*  
18       *commodities and services (as defined in such section) as*  
19       *subcontractors and suppliers under contracts awarded by*  
20       *the Department of Defense.”.*

21       **SEC. 1502. DEFINITIONS.**

22            *Section 2302 of title 10, United States Code, is amend-*  
23       *ed—*

24                    *(1) by striking out paragraphs (3) and (7);*

1           (2) by redesignating paragraph (6) as para-  
2 graph (12);

3           (3) by redesignating paragraphs (2), (4), and (5)  
4 as paragraphs (5), (8), and (9), respectively;

5           (4) by inserting after paragraph (1) the follow-  
6 ing new paragraphs:

7           “(2) The term ‘procurement’ has the same mean-  
8 ing provided such term in section 4(2) of the Office  
9 of Federal Procurement Policy Act (41 U.S.C.  
10 403(2)).

11           “(3) The term ‘procurement system’ has the same  
12 meaning provided such term in section 4(3) of the Of-  
13 fice of Federal Procurement Policy Act (41 U.S.C.  
14 403(3)).

15           “(4) The term ‘standards’ has the same meaning  
16 provided such term in section 4(4) of the Office of  
17 Federal Procurement Policy Act (41 U.S.C. 403(4)).  
18 ”;

19           (5) by inserting after paragraph (5) (as so redesi-  
20 gnated) the following new paragraphs:

21           “(6) The term ‘full and open competition’ has  
22 the same meaning provided such term in section 4(6)  
23 of the Office of Federal Procurement Policy Act (41  
24 U.S.C. 403(6)).

1           “(7) The term ‘responsible source’ has the same  
2 meaning provided such term in section 4(7) of the Of-  
3 fice of Federal Procurement Policy Act (41 U.S.C.  
4 403(7)). ”; and

5           (6) by inserting after paragraph (9) (as so redes-  
6 igned) the following new paragraphs:

7           “(10) The terms ‘item’, ‘item of supply’, and  
8 ‘supplies’ have the meaning provided in section 4(10)  
9 of the Office of Federal Procurement Policy Act (41  
10 U.S.C. 403(10)).

11           “(11) The term ‘simplified acquisition threshold’  
12 has the meaning provided that term in section 4A of  
13 the Office of Federal Procurement Policy Act.

14           “(12) The terms ‘commercial item’,  
15 ‘nondevelopmental item’, ‘component’, and ‘commer-  
16 cial component’ have the meanings provided those  
17 terms in section 4 of the Office of Federal Procure-  
18 ment Policy Act (41 U.S.C. 403).”.

19 **SEC. 1503. DELEGATION OF PROCUREMENT FUNCTIONS.**

20           (a) CONSOLIDATION OF DELEGATION AUTHORITY.—

21           (1) Section 2311 of title 10, United States Code, is amended  
22 to read as follows:

1 **“§2311. Assignment and delegation of procurement**  
2 **functions and responsibilities**

3 “(a) *IN GENERAL.*—Except to the extent expressly pro-  
4 hibited by another provision of law, the head of an agency  
5 may delegate, subject to his direction, to any other officer  
6 or official of that agency, any power under this chapter.

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

13 “(1) *the head of an agency may, within his*  
14 *agency, delegate functions and assign responsibilities*  
15 *relating to procurement;*

16 “(2) *the heads of two or more agencies may by*  
17 *agreement delegate procurement functions and assign*  
18 *procurement responsibilities from one agency to an-*  
19 *other of those agencies or to an officer or civilian em-*  
20 *ployee of another of those agencies; and*

21 “(3) *the heads of two or more agencies may cre-*  
22 *ate joint or combined offices to exercise procurement*  
23 *functions and responsibilities.*

24 “(c) *APPROVAL OF TERMINATIONS AND REDUCTIONS*  
25 *OF JOINT ACQUISITION PROGRAMS.*—(1) *The Secretary of*  
26 *Defense shall prescribe regulations that prohibit each mili-*

1 tary department participating in a joint acquisition pro-  
2 gram approved by the Under Secretary of Defense for Ac-  
3 quisition and Technology from terminating or substantially  
4 reducing its participation in such program without the ap-  
5 proval of the Under Secretary.

6       “(2) The regulations shall include the following provi-  
7 sions:

8               “(A) A requirement that, before any such  
9 termination or substantial reduction in partici-  
10 pation is approved, the proposed termination or  
11 reduction be reviewed by the Joint Requirements  
12 Oversight Council of the Department of Defense.

13               “(B) A provision that authorizes the Under  
14 Secretary of Defense for Acquisition and Tech-  
15 nology to require a military department whose  
16 participation in a joint acquisition program has  
17 been approved for termination or substantial re-  
18 duction to continue to provide some or all of the  
19 funding necessary for the acquisition program to  
20 be continued in an efficient manner.”.

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 ing to section 2311 and inserting in lieu thereof the follow-  
24 ing:

“2311. Assignment and delegation of procurement functions and responsibilities.”.

1       (b) *CONFORMING REPEAL.*—(1) *Section 2308 of title*  
2 *10, United States Code, is repealed.*

3       (2) *The table of sections at the beginning of chapter*  
4 *137 of such title is amended by striking out the item related*  
5 *to section 2308.*

6       **SEC. 1504. DETERMINATIONS AND DECISIONS.**

7       *Section 2310 of title 10, United States Code, is amend-*  
8 *ed to read as follows:*

9       **“§ 2310. Determinations and decisions**

10       “(a) *INDIVIDUAL OR CLASS DETERMINATIONS AND*  
11 *DECISIONS AUTHORIZED.*—*Determinations and decisions*  
12 *required to be made under this chapter by the head of an*  
13 *agency may be made for an individual purchase or contract*  
14 *or, except to the extent expressly prohibited by another pro-*  
15 *vision of law, for a class of purchases or contracts. Such*  
16 *determinations and decisions are final.*

17       “(b) *WRITTEN FINDINGS REQUIRED.*—(1) *Each deter-*  
18 *mination or decision under section 2306(g)(1), 2307(c), or*  
19 *2313(c) of this title shall be based on a written finding by*  
20 *the person making the determination or decision. The find-*  
21 *ing shall set out facts and circumstances that support the*  
22 *determination or decision.*

23       “(2) *Each finding referred to in paragraph (1) is*  
24 *final. The head of the agency making such finding shall*

1 *maintain a copy of the finding for not less than 6 years*  
 2 *after the date of the determination or decision.”*

3 **SEC. 1505. RESTRICTIONS ON UNDEFINITIZED CONTRAC-**  
 4 **TUAL ACTIONS.**

5 (a) *CLARIFICATION OF LIMITATION.*—Subsection (b) of  
 6 *section 2326 of title 10, United States Code, is amended—*

7 (1) *in the subsection heading, by striking out*  
 8 *“AND EXPENDITURE”;*

9 (2) *in paragraph (1)(B), by striking out “or ex-*  
 10 *pended”;*

11 (3) *in paragraph (2), by striking out “expend”*  
 12 *and inserting in lieu thereof “obligate”;* and

13 (4) *in paragraph (3)—*

14 (A) *by striking out “expended” and insert-*  
 15 *ing in lieu thereof “obligated”;* and

16 (B) *by striking out “expend” and inserting*  
 17 *in lieu thereof “obligate”.*

18 (b) *WAIVER AUTHORITY.*—Such subsection is further  
 19 *amended—*

20 (1) *by redesignating paragraph (4) as para-*  
 21 *graph (5); and*

22 (2) *by inserting after paragraph (3) the follow-*  
 23 *ing new paragraph (4):*

24 “(4) *The head of an agency may waive the provisions*  
 25 *of this subsection with respect to a contract of that agency*

1 *if such head of an agency determines that the waiver is*  
2 *necessary in order to support a contingency operation.”.*

3 *(c) INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS*  
4 *WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.—*  
5 *Subsection (g)(1)(B) of such section is amended by striking*  
6 *out “small purchase threshold” and inserting in lieu thereof*  
7 *“simplified acquisition threshold”.*

8 **SEC. 1506. REPEAL OF REQUIREMENT RELATING TO PRO-**  
9 **DUCTION SPECIAL TOOLING AND PRODUC-**  
10 **TION SPECIAL TEST EQUIPMENT.**

11 *(a) REPEAL.—Section 2329 of title 10, United States*  
12 *Code, is repealed.*

13 *(b) CLERICAL AMENDMENT.—The table of sections at*  
14 *the beginning of chapter 137 of such title is amended by*  
15 *striking out the item related to section 2329.*

16 **SEC. 1507. REGULATIONS FOR BIDS.**

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

21 *“(a) The Secretary of Defense or the Secretary of a*  
22 *military department may—*

23 *“(1) prescribe regulations for the preparation,*  
24 *submission, and opening of bids for contracts; and”.*

1       **PART II—CIVILIAN AGENCY ACQUISITIONS**

2       **SEC. 1551. DEFINITIONS.**

3       *Section 309 of the Federal Property and Administra-*  
4 *tive Services Act of 1949 (41 U.S.C. 259) is amended by*  
5 *adding at the end the following new subsections:*

6       “(d) *The term ‘simplified acquisition threshold’ has the*  
7 *meaning provided that term by section 4A of the Office of*  
8 *Federal Procurement Policy Act.*

9       “(e) *The terms ‘commercial item’, ‘nondevelopmental*  
10 *item’, ‘component’, and ‘commercial component’ have the*  
11 *meanings provided such terms by section 4 of the Office of*  
12 *Federal Procurement Policy Act (41 U.S.C. 403).”.*

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

14       *Title III of the Federal Property and Administrative*  
15 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*  
16 *by section 1301, is further amended by adding at the end*  
17 *the following new section:*

18       **“SEC. 312. ASSIGNMENT AND DELEGATION OF PROCURE-**  
19                               **MENT FUNCTIONS AND RESPONSIBILITIES.**

20       “(a) *IN GENERAL.—Except to the extent expressly pro-*  
21 *hibited by another provision of law, the head of an executive*  
22 *agency may delegate, subject to his direction, to any other*  
23 *officer or official of that agency, any power under this title.*

24       “(b) *PROCUREMENTS FOR OR WITH OTHER AGEN-*  
25 *CIES.—Subject to subsection (a), to facilitate the procure-*  
26 *ment of property and services covered by this title by each*

1 *executive agency for any other executive agency, and to fa-*  
2 *ilitate joint procurement by those executive agencies—*

3 *“(1) the head of an executive agency may, within*  
4 *his executive agency, delegate functions and assign re-*  
5 *sponsibilities relating to procurement;*

6 *“(2) the heads of two or more executive agencies*  
7 *may by agreement delegate procurement functions*  
8 *and assign procurement responsibilities from one ex-*  
9 *ecutive agency to another of those executive agencies*  
10 *or to an officer or civilian employee of another of*  
11 *those executive agencies; and*

12 *“(3) the heads of two or more executive agencies*  
13 *may create joint or combined offices to exercise pro-*  
14 *urement functions and responsibilities.”.*

15 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

16 *Title III of the Federal Property and Administrative*  
17 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*  
18 *by section 1552, is further amended by adding at the end*  
19 *the following new section:*

20 **“SEC. 313. DETERMINATIONS AND DECISIONS.**

21 *“(a) INDIVIDUAL OR CLASS DETERMINATIONS AND*  
22 *DECISIONS AUTHORIZED.—Determinations and decisions*  
23 *required to be made under this title by an agency head may*  
24 *be made for an individual purchase or contract or, except*  
25 *to the extent expressly prohibited by another provision of*

1 *law, for a class of purchases or contracts. Such determina-*  
2 *tions and decisions are final.*

3       “(b) *WRITTEN FINDINGS REQUIRED.*—(1) *Each deter-*  
4 *mination under section 305(c) shall be based on a written*  
5 *finding by the person making the determination or decision.*  
6 *The finding shall set out facts and circumstances that sup-*  
7 *port the determination or decision.*

8       “(2) *Each finding referred to in paragraph (1) is*  
9 *final. The executive agency making such finding shall*  
10 *maintain a copy of the finding for not less than 6 years*  
11 *after the date of the determination or decision.*”

12 **SEC. 1554. REPEALS.**

13       *The laws of the United States are amended to read*  
14 *as if the following sections of law had not been enacted:*

15               (1) *Section 630 of Public Law 102–393.*

16               (2) *Section 401 of Public Law 103–123.*

17 **SEC. 1555. COOPERATIVE PURCHASING.**

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

21       “(b)(1) *The Administrator shall, as far as practicable,*  
22 *provide any of the services specified in subsection (a) of this*  
23 *section to any other Federal agency, mixed-ownership Gov-*  
24 *ernment corporation (as defined in section 9101 of title 31,*

1 *United States Code), or the District of Columbia, upon its*  
2 *request.*

3       “(2)(A) *The Administrator may provide for the use of*  
4 *Federal supply schedules of the General Services Adminis-*  
5 *tration by any of the following entities upon request:*

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

9           “(ii) *The District of Columbia.*

10          “(iii) *The Commonwealth of Puerto Rico.*

11          “(iv) *The government of an Indian tribe (as de-*  
12 *finied in section 4(e) of the Indian Self-Determination*  
13 *and Education Assistance Act (25 U.S.C. 450b(e)).*

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

19       “(C) *In any case in which an entity listed in subpara-*  
20 *graph (A) uses a Federal supply schedule, the Adminis-*  
21 *trator shall require the entity to reimburse the General*  
22 *Services Administration for any administrative costs of*  
23 *using the schedule.*

24       “(3)(A) *Upon the request of a qualified nonprofit agen-*  
25 *cy for the blind or other severely handicapped that is to*

1 *provide a commodity or service to the Federal Government*  
2 *under the Javits-Wagner-O'Day Act, the Administrator*  
3 *may provide any of the services specified in subsection (a)*  
4 *to such agency to the extent practicable.*

5       “(B) A nonprofit agency receiving services under the  
6 authority of subparagraph (A) shall use the services directly  
7 in making or providing an approved commodity or ap-  
8 proved service to the Federal Government.

9       “(C) In this paragraph:

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

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

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

18           “(ii) The terms ‘approved commodity’ and ‘ap-  
19 proved service’ mean a commodity and a service, re-  
20 spectively, that has been determined by the Committee  
21 for Purchase from the Blind and Other Severely  
22 Handicapped under section 2 of the Javits-Wagner-  
23 O'Day Act (41 U.S.C. 47) to be suitable for procure-  
24 ment by the Federal Government.

1           “(iii) The term ‘Javits-Wagner-O’Day Act’  
 2           means the Act entitled ‘An Act to create a Committee  
 3           on Purchases of Blind-made Products, and for other  
 4           purposes’, approved June 25, 1938 (41 U.S.C. 46–  
 5           48c), that was revised and reenacted in the Act of  
 6           June 23, 1971 (85 Stat. 77).”.

7                           **TITLE II—CONTRACT**  
 8                           **ADMINISTRATION**

9                   **Subtitle A—Contract Payment**

10           **PART I—ARMED SERVICES ACQUISITIONS**

11   **SEC. 2001. CONTRACT FINANCING.**

12           (a) REORGANIZATION OF PRINCIPAL AUTHORITY PRO-  
 13   VISION.—Section 2307 of title 10, United States Code, is  
 14   amended—

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

17   **“§ 2307. Contract financing”;**

18                   (2) by inserting “PAYMENT AUTHORITY.—” after  
 19                   “(a)” in subsection (a);

20                   (3) by inserting “PAYMENT AMOUNT.—” after  
 21                   “(b)” in subsection (b);

22                   (4) by inserting “SECURITY FOR ADVANCE PAY-  
 23                   MENTS.—” after “(c)” in subsection (c);

24                   (5) by inserting “CONDITIONS FOR PROGRESS  
 25                   PAYMENTS.—” after “(d)” in subsection (d); and

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

4           (b) TERMINOLOGY CORRECTION.—Such section is fur-  
5           ther amended in subsection (a)(2) by striking out “bid”.

6           (c) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE  
7           PAYMENTS.—Such section is further amended in subsection  
8           (c) by inserting before the period at the end of the third  
9           sentence the following: “and is effective immediately upon  
10          the first advancement of funds without filing, notice, or any  
11          other action by the United States”.

12          (d) CONDITIONS FOR PROGRESS PAYMENTS.—Such  
13          section is further amended in subsection (d)—

14               (1) in the first sentence of paragraph (1), by  
15               striking out “work, which” and all that follows  
16               through “accomplished” and inserting in lieu thereof  
17               “work accomplished that meets standards established  
18               under the contract”; and

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

21               “(3) This subsection applies to a contract for an  
22               amount equal to or greater than the simplified acquisition  
23               threshold.”.

1           (e) *CONDITIONS FOR PAYMENTS FOR COMMERCIAL*  
2 *ITEMS.*—Such section is further amended by inserting after  
3 subsection (d) the following new subsection (e):

4           “(e) *CONDITIONS FOR PAYMENTS FOR COMMERCIAL*  
5 *ITEMS.*—(1) *Payments under subsection (a) for commercial*  
6 *items may be made under such terms and conditions as*  
7 *the head of the agency determines are appropriate or cus-*  
8 *tomary in the commercial marketplace. The head of the*  
9 *agency shall obtain adequate security for such payments.*  
10 *If the security is in the form of a lien in favor of the United*  
11 *States, such lien is paramount to all other liens and is effec-*  
12 *tive immediately upon the first payment, without filing, no-*  
13 *tice, or other action by the United States.*

14           “(2) *Advance payments made under subsection (a) for*  
15 *commercial items may include payments, in a total amount*  
16 *of not more than 15 percent of the contract price, in ad-*  
17 *vance of any performance of work under the contract.*

18           “(3) *The conditions of subsections (c) and (d) do not*  
19 *apply to payments made for commercial items in accord-*  
20 *ance with this subsection.”.*

21           (f) *NAVY CONTRACTS.*—Such section is further amend-  
22 *ed by inserting after subsection (e), as added by subsection*  
23 *(e) of this section, the following new subsection (f):*

24           “(f) *CERTAIN NAVY CONTRACTS.*—(1) *The Secretary of*  
25 *the Navy shall provide that the rate for progress payments*

1 *on any contract awarded by the Secretary for repair, main-*  
2 *tenance, or overhaul of a naval vessel shall be not less*  
3 *than—*

4           “(A) 95 percent, in the case of a firm considered  
5           to be a small business; and

6           “(B) 90 percent, in the case of any other firm.

7           “(2) The Secretary of the Navy may advance to private  
8 *salvage companies such funds as the Secretary considers*  
9 *necessary to provide for the immediate financing of salvage*  
10 *operations. Advances under this paragraph shall be made*  
11 *on terms that the Secretary considers adequate for the pro-*  
12 *tection of the United States.*

13           “(3) The Secretary of the Navy shall ensure that, when  
14 *partial, progress, or other payments are made under a con-*  
15 *tract for construction or conversion of a naval vessel, the*  
16 *United States is secured by a lien upon work in progress*  
17 *and on property acquired for performance of the contract*  
18 *on account of all payments so made. The lien is paramount*  
19 *to all other liens.”.*

20           (g) *CLERICAL AMENDMENT.—The table of sections at*  
21 *the beginning of chapter 137 of title 10, United States Code,*  
22 *is amended by striking out the item relating to section 2307*  
23 *and inserting in lieu thereof the following:*

*“2307. Contract financing.”.*

24           (h) *REPEAL OF SUPERSEDED PROVISIONS.—*

1           (1) *PROGRESS PAYMENTS UNDER CERTAIN NAVY*  
2 *CONTRACTS.*—

3           (A) *REPEAL.*—*Section 7312 of title 10,*  
4 *United States Code, is repealed.*

5           (B) *CLERICAL AMENDMENT.*—*The table of*  
6 *sections at the beginning of chapter 633 of such*  
7 *title is amended by striking out the item relating*  
8 *to section 7312.*

9           (2) *ADVANCEMENT OF PAYMENTS FOR NAVY SAL-*  
10 *VAGE OPERATIONS.*—

11           (A) *REPEAL.*—*Section 7364 of such title is*  
12 *repealed.*

13           (B) *CLERICAL AMENDMENT.*—*The table of*  
14 *sections at the beginning of chapter 637 of such*  
15 *title is amended by striking out the item relating*  
16 *to section 7364.*

17           (3) *PARTIAL PAYMENTS UNDER NAVY CON-*  
18 *TRACTS.*—

19           (A) *REPEAL.*—*Section 7521 of such title is*  
20 *repealed.*

21           (B) *CLERICAL AMENDMENT.*—*The table of*  
22 *sections at the beginning of chapter 645 of such*  
23 *title is amended by striking out the item relating*  
24 *to section 7521.*

1           (4) *NAVY RESEARCH CONTRACTS.*—Section 7522  
2           of such title is amended—

3                   (A) by striking out subsection (b); and

4                   (B) by redesignating subsection (c) as sub-  
5           section (b).

6   **SEC. 2002. REPEAL OF VOUCHERING PROCEDURES SEC-**  
7                   **TION.**

8           (a) *REPEAL.*—Section 2355 of title 10, United States  
9   Code, is repealed.

10          (b) *CLERICAL AMENDMENT.*—The table of sections at  
11   the beginning of chapter 139 of such title is amended by  
12   striking out the item relating to section 2355.

13           **PART II—CIVILIAN AGENCY ACQUISITIONS**

14   **SEC. 2051. CONTRACT FINANCING.**

15          (a) *REORGANIZATION OF PRINCIPAL AUTHORITY PRO-*  
16   *VISION.*—Section 305 of the Federal Property and Adminis-  
17   trative Services Act of 1949 (41 U.S.C. 255) is amended—

18                   (1) by striking out the section heading and the  
19           section designation and inserting in lieu thereof the  
20           following:

21   **“SEC. 305. CONTRACT FINANCING.”;**

22                   (2) by inserting “*PAYMENT AUTHORITY.*—” after  
23           “(a)” in subsection (a);

24                   (3) by inserting “*PAYMENT AMOUNT.*—” after  
25           “(b)” in subsection (b); and

1           (4) by inserting “SECURITY FOR ADVANCE PAY-  
2           MENTS.—” after “(c)” in subsection (c).

3           (b) TERMINOLOGY CORRECTION.—Such section is fur-  
4           ther amended in subsection (a)(2) by striking out “bid”.

5           (c) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE  
6           PAYMENTS.—Such section is further amended in subsection  
7           (c) by inserting before the period at the end of the third  
8           sentence the following: “and is effective immediately upon  
9           the first advancement of funds without filing, notice, or any  
10          other action by the United States”.

11          (d) REVISION OF CIVILIAN AGENCY PROVISION TO EN-  
12          SURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-  
13          MENTS.—

14               (1) IN GENERAL.—Such section is further  
15               amended by adding at the end the following new sub-  
16               sections:

17               “(d) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The  
18               executive agency shall ensure that any payment for work  
19               in progress (including materials, labor, and other items)  
20               under a contract of an executive agency that provides for  
21               such payments is commensurate with the work accom-  
22               plished that meets standards established under the contract.  
23               The contractor shall provide such information and evidence  
24               as the executive agency determines necessary to permit the  
25               executive agency to carry out the preceding sentence.

1       “(2) The executive agency shall ensure that progress  
2 payments referred to in paragraph (1) are not made for  
3 more than 80 percent of the work accomplished under the  
4 contract so long as the executive agency has not made the  
5 contractual terms, specifications, and price definite.

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

9       “(e) *CONDITIONS FOR PAYMENTS FOR COMMERCIAL*  
10 *ITEMS.—(1) Payments under subsection (a) for commercial*  
11 *items may be made under such terms and conditions as*  
12 *the executive agency determines are appropriate or cus-*  
13 *tomary in the commercial marketplace. The executive agen-*  
14 *cy shall obtain adequate security for such payments. If the*  
15 *security is in the form of a lien in favor of the United*  
16 *States, such lien is paramount to all other liens and is effec-*  
17 *tive immediately upon the first payment, without filing, no-*  
18 *tice, or other action by the United States.*

19       “(2) Advance payments made under subsection (a) for  
20 commercial items may include payments, in a total amount  
21 of not more than 15 percent of the contract price, in ad-  
22 vance of any performance of work under the contract.

23       “(3) The conditions of subsections (c) and (d) do not  
24 apply to payments made for commercial items in accord-  
25 ance with this subsection.

1       “(f) ACTION IN CASE OF FRAUD.—(1) In any case in  
2 which the remedy coordination official of an executive agen-  
3 cy finds that there is substantial evidence that the request  
4 of a contractor for advance, partial, or progress payment  
5 under a contract awarded by that executive agency is based  
6 on fraud, the remedy coordination official shall recommend  
7 that the executive agency reduce or suspend further pay-  
8 ments to such contractor.

9       “(2) An executive agency receiving a recommendation  
10 under paragraph (1) in the case of a contractor’s request  
11 for payment under a contract shall determine whether there  
12 is substantial evidence that the request is based on fraud.  
13 Upon making such a determination, the executive agency  
14 may reduce or suspend further payments to the contractor  
15 under such contract.

16       “(3) The extent of any reduction or suspension of pay-  
17 ments by an executive agency under paragraph (2) on the  
18 basis of fraud shall be reasonably commensurate with the  
19 anticipated loss to the United States resulting from the  
20 fraud.

21       “(4) A written justification for each decision of the ex-  
22 ecutive agency whether to reduce or suspend payments  
23 under paragraph (2), and for each recommendation re-  
24 ceived by the executive agency in connection with such deci-

1 *sion, shall be prepared and be retained in the files of the*  
2 *executive agency.*

3       “(5) *Each executive agency shall prescribe procedures*  
4 *to ensure that, before the executive agency decides to reduce*  
5 *or suspend payments in the case of a contractor under*  
6 *paragraph (2), the contractor is afforded notice of the pro-*  
7 *posed reduction or suspension and an opportunity to sub-*  
8 *mit matters to the executive agency in response to such pro-*  
9 *posed reduction or suspension.*

10       “(6) *Not later than 180 days after the date on which*  
11 *an executive agency reduces or suspends payments to a con-*  
12 *tractor under paragraph (2), the remedy coordination offi-*  
13 *cial of the executive agency shall—*

14               “(A) *review the determination of fraud on which*  
15 *the reduction or suspension is based; and*

16               “(B) *transmit a recommendation to the executive*  
17 *agency whether the suspension or reduction should*  
18 *continue.*

19       “(7) *Each executive agency who receives recommenda-*  
20 *tions made by a remedy coordination official of the execu-*  
21 *tive agency to reduce or suspend payments under para-*  
22 *graph (2) during a fiscal year shall prepare for such year*  
23 *a report that contains the recommendations, the actions*  
24 *taken on the recommendations and the reasons for such ac-*  
25 *tions, and an assessment of the effects of such actions on*

1 *the Federal Government. Any such report shall be available*  
 2 *to any Member of Congress upon request.*

3       “(8) *An executive agency may not delegate responsibil-*  
 4 *ities under this subsection to any person in a position below*  
 5 *level IV of the Executive Schedule.*

6       “(9) *In this subsection, the term ‘remedy coordination*  
 7 *official’, with respect to an executive agency, means the per-*  
 8 *son or entity in that executive agency who coordinates with-*  
 9 *in that executive agency the administration of criminal,*  
 10 *civil, administrative, and contractual remedies resulting*  
 11 *from investigations of fraud or corruption related to pro-*  
 12 *curement activities.’”.*

13               (2) *RELATIONSHIP TO PROMPT PAYMENT RE-*  
 14 *QUIREMENTS.—The amendment made by paragraph*  
 15 *(1) is not intended to impair or modify procedures*  
 16 *required by the provisions of chapter 39 of title 31,*  
 17 *United States Code, and the regulations issued pursu-*  
 18 *ant to such provisions of law, that relate to progress*  
 19 *payment requests, as such procedures are in effect on*  
 20 *the date of the enactment of this Act.*

21               **PART III—ACQUISITIONS GENERALLY**

22       **SEC. 2061. INTEREST PENALTY ON CONTRACT CLOSE-OUT**  
 23               **LAG-TIME.**

24       *Section 3903(a)(1) of title 31, United States Code, is*  
 25 *amended—*

1           (1) by striking out “or” at the end of subpara-  
2 graph (A);

3           (2) by inserting “or” after the semicolon at the  
4 end of subparagraph (B); and

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

7                   “(C) in any case in which the Government  
8 delays making final payment under the contract  
9 for more than one year after the date on which  
10 the contractor completes all obligations under the  
11 contract (including submission to the Govern-  
12 ment of final incurred costs for all years covered  
13 by the contract), the date on which the contractor  
14 completes such obligations;”.

## 15           **Subtitle B—Cost Principles**

### 16           **PART I—ARMED SERVICES ACQUISITIONS**

#### 17           **SEC. 2101. ALLOWABLE CONTRACT COSTS.**

18           (a) EXTENSION OF COVERAGE TO COAST GUARD AND  
19 NASA; OTHER MISCELLANEOUS AMENDMENTS.—Section  
20 2324 of title 10, United States Code, is amended as follows:

21           (1) Subsection (a) is amended—

22                   (A) by inserting after “(a)” the following:

23                   “INDIRECT COST THAT VIOLATES A FAR COST  
24 PRINCIPLE.—”;

1           (B) by striking out “Secretary of Defense”  
2 and inserting in lieu thereof “head of an agen-  
3 cy”;

4           (C) by striking out “Department of De-  
5 fense” and inserting in lieu thereof “agency”;  
6 and

7           (D) by striking out “the Department of De-  
8 fense Supplement” and inserting in lieu thereof  
9 “applicable agency supplement”.

10 (2) Subsection (b) is amended—

11           (A) by inserting after “(b)” the following:  
12 “PENALTY FOR VIOLATION OF COST PRIN-  
13 CIPLE.—”;

14           (B) in subparagraph (B) of paragraph (1)  
15 by striking out “regulations issued by the Sec-  
16 retary” and inserting in lieu thereof “provisions  
17 in the Federal Acquisition Regulation”; and

18           (C) by striking out “Secretary” each  
19 place it appears and inserting in lieu thereof  
20 “head of the agency”.

21 (3) Subsection (c) is amended—

22           (A) by inserting after “(c)” the following:  
23 “WAIVER OF PENALTY.—”; and

24           (B) by striking out “The Secretary shall  
25 prescribe regulations providing” in the first sen-

1           *tence and inserting in lieu thereof “The Federal*  
2           *Acquisition Regulation shall provide”.*

3           *(4) Subsection (d) is amended—*

4                 *(A) by inserting after “(d)” the following:*  
5                 *“APPLICABILITY OF CONTRACT DISPUTES PRO-*  
6                 *CEDURE TO DISALLOWANCE OF COST AND AS-*  
7                 *SESSMENT OF PENALTY.—”;* and

8                 *(B) by striking out “the Secretary” and in-*  
9                 *serting in lieu thereof “the head of an agency”.*

10          *(5) Subsection (e) is amended—*

11                 *(A) by inserting after “(e)” the following:*  
12                 *“SPECIFIC COSTS NOT ALLOWABLE.—”;*

13                 *(B) in subparagraph (D) of paragraph (1),*  
14                 *by striking out “regulations of the Secretary of*  
15                 *Defense” and inserting in lieu thereof “provi-*  
16                 *sions of the Federal Acquisition Regulation”;*

17                 *(C) in subparagraph (M) of paragraph (1),*  
18                 *by striking out “regulations prescribed by the*  
19                 *Secretary of Defense” and inserting in lieu there-*  
20                 *of “the Federal Acquisition Regulation”;*

21                 *(D) in subparagraph (A) of paragraph (2),*  
22                 *by inserting “of Defense” after “Secretary” the*  
23                 *first place it occurs;*

24                 *(E) in subparagraph (C) of paragraph (2),*  
25                 *by striking out “head of the agency” in the first*

1           *sentence and inserting in lieu thereof “Secretary*  
2           *of Defense”;*

3           *(F) in subparagraph (A) of paragraph (3),*  
4           *by striking out “regulations prescribed by the*  
5           *Secretary” and inserting in lieu thereof “the*  
6           *Federal Acquisition Regulation”;* and

7           *(G) by amending paragraph (4) to read as*  
8           *follows:*

9           *“(4) The provisions of the Federal Acquisition Regula-*  
10          *tion implementing this section may establish appropriate*  
11          *definitions, exclusions, limitations, and qualifications.”.*

12          *(6) Subsection (f) is amended—*

13            *(A) in paragraph (1)—*

14            *(i) by striking out “(1)” and all that*  
15            *follows through “The amendments” and in-*  
16            *serting in lieu thereof the following: “RE-*  
17            *QUIRED REGULATIONS.—The Federal Ac-*  
18            *quisition Regulation shall contain provi-*  
19            *sions on the allowability of contractor costs.*  
20            *Such provisions”, and*

21            *(ii) by striking out “These regulations”*  
22            *and inserting in lieu thereof “The regula-*  
23            *tions”;* and

24            *(B) in paragraphs (2), (3), and (4)—*

1                   (i) by striking out “defense” before  
2                   “contract auditor” each place it appears,  
3                   and

4                   (ii) by striking out “regulation” each  
5                   place it appears and inserting in lieu there-  
6                   of “Federal Acquisition Regulation”.

7                   (7) Subsection (g) is amended to read as follows:

8                   “(g) *APPLICABILITY OF REGULATIONS TO SUB-*  
9                   *CONTRACTORS.*—The regulations referred to in subsections  
10                  (i) and (f)(1) shall require prime contractors of a covered  
11                  contract, to the maximum extent practicable, to apply the  
12                  provisions of such regulations to all subcontractors of the  
13                  covered contract.”.

14                  (8) Subsection (h) is amended—

15                   (A) by inserting after “(h)” the following:

16                   “*CONTRACTOR CERTIFICATION REQUIRED.*—”;

17                   (B) by striking out “by the Secretary” in  
18                   paragraph (1) and inserting in lieu thereof “in  
19                   the Federal Acquisition Regulation”; and

20                   (C) by striking out “Secretary of Defense”  
21                   in paragraph (2) and inserting in lieu thereof  
22                   “head of the agency”.

23                  (9) Subsection (i) is amended by striking out  
24                  “The submission to the Department of Defense” and  
25                  inserting in lieu thereof “*PENALTIES FOR SUBMIS-*

1        *SION OF COST KNOWN AS NOT ALLOWABLE.—The*  
2        *submission to an agency”.*

3            (10) *Subsection (j) is amended—*

4                    (A) *by inserting after “(j)” the following:*

5                    *“CONTRACTOR TO HAVE BURDEN OF*  
6                    *PROOF.—”; and*

7                    (B) *by striking out “United States Claims*  
8                    *Court” and inserting in lieu thereof “United*  
9                    *States Court of Federal Claims”.*

10            (11) *Subsection (k) is amended—*

11                    (A) *by inserting after “(k)” the following:*

12                    *“PROCEEDING COSTS NOT ALLOWABLE.—”;*

13                    (B) *in paragraph (2), by striking out “decisi-*  
14                    *on by the Department of Defense—” and in-*  
15                    *serting in lieu thereof “decision—”; and*

16                    (C) *in paragraph (4)—*

17                            (i) *by inserting after “head of the*  
18                            *agency” the following: “or Secretary of the*  
19                            *military department concerned”,*

20                            (ii) *by striking out “under regulations*  
21                            *prescribed by such agency head” and insert-*  
22                            *ing in lieu thereof “in accordance with the*  
23                            *Federal Acquisition Regulation”,*

24                            (iii) *by inserting “or Secretary” after*  
25                            *“agency head”, and*

1                   (iv) by inserting before the period at  
2                   the end the following: “or military depart-  
3                   ment”.

4           (b) *COVERED CONTRACT DEFINED.*—Such section is  
5 further amended by striking out subsections (l) and (m) and  
6 inserting in lieu thereof the following:

7           “(l) *DEFINITIONS.*—In this section:

8                   “(1)(A) The term ‘covered contract’ means a con-  
9 tract for an amount in excess of \$500,000 that is en-  
10 tered into by the head of an agency, except that such  
11 term does not include a fixed-price contract without  
12 cost incentives or any contract for the purchase of  
13 commercial items.

14                   “(B) The dollar amount in subparagraph (A)  
15 shall be adjusted on October 1 of each year divisible  
16 by 5 to the equivalent amount in constant fiscal year  
17 1993 dollars (rounded to the nearest \$10,000).

18                   “(2) The term ‘head of the agency’ or ‘agency  
19 head’ does not include the Secretary of a military de-  
20 partment.

21                   “(3) The term ‘agency’ means the Department of  
22 Defense, the Coast Guard, and the National Aero-  
23 nautics and Space Administration.”.

24           (c) *REGULATIONS.*—The regulations of the Secretary  
25 of Defense implementing section 2324 of title 10, United

1 *States Code, shall remain in effect until the Federal Acqui-*  
2 *sition Regulation is revised to implement the amendments*  
3 *made by this section.*

4 **SEC. 2102. REPEAL OF AUTHORITY FOR CONTRACT PROFIT**  
5 **CONTROLS DURING EMERGENCY PERIODS.**

6 (a) *REPEAL.*—Section 2382 of title 10, United States  
7 *Code, is repealed.*

8 (b) *CLERICAL AMENDMENT.*—The table of sections at  
9 *the beginning of chapter 141 of such title is amended by*  
10 *striking out the item relating to section 2382.*

11 **PART II—CIVILIAN AGENCY ACQUISITIONS**

12 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

13 *Section 306 of the Federal Property and Administra-*  
14 *tive Services Act of 1949 (41 U.S.C. 256) is amended to*  
15 *read as follows:*

16 **“SEC. 306. ALLOWABLE COSTS.**

17 *“(a) INDIRECT COST THAT VIOLATES A FAR COST*  
18 *PRINCIPLE.*—An executive agency shall require that a cov-  
19 *ered contract provide that if the contractor submits to the*  
20 *executive agency a proposal for settlement of indirect costs*  
21 *incurred by the contractor for any period after such costs*  
22 *have been accrued and if that proposal includes the submis-*  
23 *sion of a cost which is unallowable because the cost violates*  
24 *a cost principle in the Federal Acquisition Regulation (re-*  
25 *ferred to in section 25(c)(1) of the Office of Federal Procure-*

1 *ment Policy Act (41 U.S.C. 421(c)(1)) or an executive agen-*  
2 *cy supplement to the Federal Acquisition Regulation, the*  
3 *cost shall be disallowed.*

4 *“(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—*

5 *(1) If the executive agency determines that a cost submitted*  
6 *by a contractor in its proposal for settlement is expressly*  
7 *unallowable under a cost principle referred to in subsection*  
8 *(a) that defines the allowability of specific selected costs,*  
9 *the executive agency shall assess a penalty against the con-*  
10 *tractor in an amount equal to—*

11 *“(A) the amount of the disallowed cost allocated*  
12 *to covered contracts for which a proposal for settle-*  
13 *ment of indirect costs has been submitted; plus*

14 *“(B) interest (to be computed based on provi-*  
15 *sions in the Federal Acquisition Regulation) to com-*  
16 *pensate the United States for the use of any funds*  
17 *which a contractor has been paid in excess of the*  
18 *amount to which the contractor was entitled.*

19 *“(2) If the executive agency determines that a proposal*  
20 *for settlement of indirect costs submitted by a contractor*  
21 *includes a cost determined to be unallowable in the case*  
22 *of such contractor before the submission of such proposal,*  
23 *the executive agency shall assess a penalty against the con-*  
24 *tractor in an amount equal to two times the amount of the*

1 *disallowed cost allocated to covered contracts for which a*  
2 *proposal for settlement of indirect costs has been submitted.*

3       “(c) *WAIVER OF PENALTY.—The Federal Acquisition*  
4 *Regulation shall provide for a penalty under subsection (b)*  
5 *to be waived in the case of a contractor’s proposal for settle-*  
6 *ment of indirect costs when—*

7               “(1) *the contractor withdraws the proposal before*  
8 *the formal initiation of an audit of the proposal by*  
9 *the Federal Government and resubmits a revised pro-*  
10 *posal;*

11               “(2) *the amount of unallowable costs subject to*  
12 *the penalty is insignificant; or*

13               “(3) *the contractor demonstrates, to the contract-*  
14 *ing officer’s satisfaction, that—*

15                       “(A) *it has established appropriate policies*  
16 *and personnel training and an internal control*  
17 *and review system that provide assurances that*  
18 *unallowable costs subject to penalties are pre-*  
19 *cluded from being included in the contractor’s*  
20 *proposal for settlement of indirect costs; and*

21                       “(B) *the unallowable costs subject to the*  
22 *penalty were inadvertently incorporated into the*  
23 *proposal.*

24       “(d) *APPLICABILITY OF CONTRACT DISPUTES PROCE-*  
25 *DURE TO DISALLOWANCE OF COST AND ASSESSMENT OF*

1 *PENALTY.—An action of an executive agency under sub-*  
2 *section (a) or (b)—*

3           “(1) shall be considered a final decision for the  
4           purposes of section 6 of the Contract Disputes Act of  
5           1978 (41 U.S.C. 605); and

6           “(2) is appealable in the manner provided in  
7           section 7 of such Act (41 U.S.C. 606).

8           “(e) *SPECIFIC COSTS NOT ALLOWABLE.—(1) The fol-*  
9 *lowing costs are not allowable under a covered contract:*

10           “(A) *Costs of entertainment, including amuse-*  
11 *ment, diversion, and social activities, and any costs*  
12 *directly associated with such costs (such as tickets to*  
13 *shows or sports events, meals, lodging, rentals, trans-*  
14 *portation, and gratuities).*

15           “(B) *Costs incurred to influence (directly or in-*  
16 *directly) legislative action on any matter pending be-*  
17 *fore Congress or a State legislature.*

18           “(C) *Costs incurred in defense of any civil or*  
19 *criminal fraud proceeding or similar proceeding (in-*  
20 *cluding filing of any false certification) brought by*  
21 *the United States where the contractor is found liable*  
22 *or had pleaded nolo contendere to a charge of fraud*  
23 *or similar proceeding (including filing of a false cer-*  
24 *tification).*

1           “(D) Payments of fines and penalties resulting  
2 from violations of, or failure to comply with, Federal,  
3 State, local, or foreign laws and regulations, except  
4 when incurred as a result of compliance with specific  
5 terms and conditions of the contract or specific writ-  
6 ten instructions from the contracting officer authoriz-  
7 ing in advance such payments in accordance with ap-  
8 plicable provisions of the Federal Acquisition Regula-  
9 tion.

10           “(E) Costs of membership in any social, dining,  
11 or country club or organization.

12           “(F) Costs of alcoholic beverages.

13           “(G) Contributions or donations, regardless of  
14 the recipient.

15           “(H) Costs of advertising designed to promote  
16 the contractor or its products.

17           “(I) Costs of promotional items and memora-  
18 bilia, including models, gifts, and souvenirs.

19           “(J) Costs for travel by commercial aircraft  
20 which exceed the amount of the standard commercial  
21 fare.

22           “(K) Costs incurred in making any payment  
23 (commonly known as a ‘golden parachute payment’)  
24 which is—

1           “(i) in an amount in excess of the normal  
2           severance pay paid by the contractor to an em-  
3           ployee upon termination of employment; and

4           “(ii) is paid to the employee contingent  
5           upon, and following, a change in management  
6           control over, or ownership of, the contractor or a  
7           substantial portion of the contractor’s assets.

8           “(L) Costs of commercial insurance that protects  
9           against the costs of the contractor for correction of the  
10          contractor’s own defects in materials or workmanship.

11          “(M) Costs of severance pay paid by the contrac-  
12          tor to foreign nationals employed by the contractor  
13          under a service contract performed outside the United  
14          States, to the extent that the amount of severance pay  
15          paid in any case exceeds the amount paid in the in-  
16          dustry involved under the customary or prevailing  
17          practice for firms in that industry providing similar  
18          services in the United States, as determined under the  
19          Federal Acquisition Regulation.

20          “(N) Costs of severance pay paid by the contrac-  
21          tor to a foreign national employed by the contractor  
22          under a service contract performed in a foreign coun-  
23          try if the termination of the employment of the for-  
24          eign national is the result of the closing of, or the cur-  
25          tailment of activities at, a United States facility in

1       *that country at the request of the government of that*  
2       *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) *Pursuant to the Federal Acquisition Regula-*  
8       *tion and subject to the availability of appropriations, an*  
9       *executive agency, in awarding a covered contract, may*  
10       *waive the application of the provisions of paragraphs*  
11       *(1)(M) and (1)(N) to that contract if the executive agency*  
12       *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 agency*  
17       *posted outside the United States;*

18             “(ii) *the contractor has taken (or has established*  
19       *plans to take) appropriate actions within the contrac-*  
20       *tor’s control to minimize the amount and number of*  
21       *incidents of the payment of severance pay by the con-*  
22       *tractor to employees under the contract who are for-*  
23       *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) An executive agency shall include in the sollicita-*  
7        *tion for a covered contract a statement indicating—*

8                *“(i) that a waiver has been granted under sub-*  
9                *paragraph (A) for the contract; or*

10                *“(ii) whether the executive agency will consider*  
11                *granting such a waiver, and, if the executive agency*  
12                *will consider granting a waiver, the criteria to be*  
13                *used in granting the waiver.*

14        *“(C) An executive agency shall make the final deter-*  
15        *mination regarding whether to grant a waiver under sub-*  
16        *paragraph (A) with respect to a covered contract before*  
17        *award of the contract.*

18        *“(3) The provisions of the Federal Acquisition Regula-*  
19        *tion implementing this section may establish appropriate*  
20        *definitions, exclusions, limitations, and qualifications. Any*  
21        *submission by a contractor of costs which are incurred by*  
22        *the contractor and which are claimed to be allowable under*  
23        *Department of Energy management and operating con-*  
24        *tracts shall be considered a ‘proposal for settlement of indi-*

1 *rect costs incurred by the contractor for any period after*  
2 *such costs have been accrued', as used in this section.*

3       “(f) *REQUIRED REGULATIONS.—(1) The Federal Ac-*  
4 *quisition Regulation shall contain provisions on the allow-*  
5 *ability of contractor costs. Such provisions shall define in*  
6 *detail and in specific terms those costs which are unallow-*  
7 *able, in whole or in part, under covered contracts. The regu-*  
8 *lations shall, at a minimum, clarify the cost principles ap-*  
9 *plicable 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 contract auditor on the  
13 allowability of such costs.

14           “(3) The Federal Acquisition Regulation shall provide  
15 that, to the maximum extent practicable, a contract auditor  
16 be present at any negotiation or meeting with the contractor  
17 regarding a determination of the allowability of indirect  
18 costs of the contractor.

19           “(4) The Federal Acquisition Regulation shall require  
20 that all categories of costs designated in the report of a con-  
21 tract auditor as questioned with respect to a proposal for  
22 settlement be resolved in such a manner that the amount  
23 of the individual questioned costs that are paid will be re-  
24 flected in the settlement.

1       “(g) *APPLICABILITY OF REGULATIONS TO SUB-*  
2 *CONTRACTORS.*—*The regulations referred to in subsections*  
3 *(e) and (f)(1) shall require prime contractors of a covered*  
4 *contract, to the maximum extent practicable, to apply the*  
5 *provisions of such regulations to all subcontractors of the*  
6 *covered contract.*

7       “(h) *CONTRACTOR CERTIFICATION REQUIRED.*—(1) *A*  
8 *proposal for settlement of indirect costs applicable to a cov-*  
9 *ered contract shall include a certification by an official of*  
10 *the contractor that, to the best of the certifying official’s*  
11 *knowledge and belief, all indirect costs included in the pro-*  
12 *posal are allowable. Any such certification shall be in a*  
13 *form prescribed in the Federal Acquisition Regulation.*

14       “(2) *An executive agency may, in an exceptional case,*  
15 *waive the requirement for certification under paragraph (1)*  
16 *in the case of any contract if the agency—*

17               “(A) *determines in such case that it would be in*  
18 *the interest of the United States to waive such certifi-*  
19 *cation; and*

20               “(B) *states in writing the reasons for that deter-*  
21 *mination and makes such determination available to*  
22 *the public.*

23       “(i) *PENALTIES FOR SUBMISSION OF COST KNOWN AS*  
24 *NOT ALLOWABLE.*—*The submission to an executive agency*  
25 *of a proposal for settlement of costs for any period after*

1 *such costs have been accrued that includes a cost that is*  
2 *expressly specified by statute or regulation as being unal-*  
3 *lowable, with the knowledge that such cost is unallowable,*  
4 *shall be subject to the provisions of section 287 of title 18,*  
5 *United States Code, and section 3729 of title 31, United*  
6 *States Code.*

7       “(j) *CONTRACTOR TO HAVE BURDEN OF PROOF.—In*  
8 *a proceeding before a board of contract appeals, the United*  
9 *States Court of Federal Claims, or any other Federal court*  
10 *in which the reasonableness of indirect costs for which a*  
11 *contractor seeks reimbursement from the United States is*  
12 *in issue, the burden of proof shall be upon the contractor*  
13 *to establish that those costs are reasonable.*

14       “(k) *PROCEEDING COSTS NOT ALLOWABLE.—(1) Ex-*  
15 *cept as otherwise provided in this subsection, costs incurred*  
16 *by a contractor in connection with any criminal, civil, or*  
17 *administrative proceeding commenced by the United States*  
18 *or a State are not allowable as reimbursable costs under*  
19 *a covered contract if the proceeding (A) relates to a viola-*  
20 *tion of, or failure to comply with, a Federal or State statute*  
21 *or regulation, and (B) results in a disposition described in*  
22 *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 con-*  
2           *viction (including a conviction pursuant to a plea of*  
3           *nolo contendere) by reason of the violation or failure*  
4           *referred to in paragraph (1).*

5           “(B) *In the case of a civil or administrative pro-*  
6           *ceeding involving an allegation of fraud or similar*  
7           *misconduct, a determination of contractor liability on*  
8           *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), (C),*  
23           *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 is*

1 *resolved by consent or compromise pursuant to an agree-*  
2 *ment entered into by a contractor and the United States,*  
3 *the costs incurred by the contractor in connection with such*  
4 *proceeding that are otherwise not allowable as reimbursable*  
5 *costs under such paragraph may be allowed to the extent*  
6 *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 executive agen-*  
9 *cy that awarded the covered contract involved in the pro-*  
10 *ceeding may allow the costs incurred by the contractor in*  
11 *connection with such proceeding as reimbursable costs if the*  
12 *executive agency determines, in accordance with the Federal*  
13 *Acquisition Regulation, that the costs were incurred as a*  
14 *result of (A) a specific term or condition of the contract,*  
15 *or (B) specific written instructions of the executive agency.*

16       “(5)(A) *Except as provided in subparagraph (C), costs*  
17 *incurred by a contractor in connection with a criminal,*  
18 *civil, or administrative proceeding commenced by the Unit-*  
19 *ed States or a State in connection with a covered contract*  
20 *may be allowed as reimbursable costs under the contract*  
21 *if such costs are not disallowable under paragraph (1), but*  
22 *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, to*

1 *the extent that such costs are determined to be otherwise*  
2 *allowable and allocable under the Federal Acquisition Regu-*  
3 *lation.*

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 may  
9 be appropriate.

10       “(C) In the case of a proceeding referred to in subpara-  
11 graph (A), contractor costs otherwise allowable as reimburs-  
12 able costs under this paragraph are not allowable if (i) such  
13 proceeding involves the same contractor misconduct alleged  
14 as the basis of another criminal, civil, or administrative  
15 proceeding, and (ii) the costs of such other proceeding are  
16 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 proceed-  
21 ing—

22                       “(i) means all costs incurred by a contrac-  
23 tor, whether before or after the commencement of  
24 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 employee  
5           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, and  
10          employees of the contractor for time devoted  
11          by such directors, officers, and employees to  
12          such proceeding.

13          “(C) The term ‘penalty’ does not include restitu-  
14          tion, reimbursement, or compensatory damages.

15          “(1) 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 a  
19          fixed-price contract without cost incentives or any contract  
20          for the purchase of commercial items.

21          “(2) The dollar amount in paragraph (1) shall be ad-  
22          justed on October 1 of each year divisible by 5 to the equiva-  
23          lent amount in constant fiscal year 1993 dollars (rounded  
24          to the nearest \$10,000).”.

1 **SEC. 2152. REVISION OF COST PRINCIPLE RELATING TO EN-**  
2 **TERTAINMENT, GIFT, AND RECREATION**  
3 **COSTS FOR CONTRACTOR EMPLOYEES.**

4 (a) *COSTS NOT ALLOWABLE.*—The costs of entertain-  
5 ment, gifts, or recreation for employees of a contractor or  
6 members of their families that are provided by the contrac-  
7 tor to improve employee morale or performance or for any  
8 other purpose are not allowable under a covered contract  
9 unless, within 120 days of the date of the enactment of this  
10 Act, the Federal Acquisition Regulatory Council prescribes  
11 amendments to the Federal Acquisition Regulation specify-  
12 ing circumstances under which such costs are allowable  
13 under a covered contract. At a minimum, such amendments  
14 shall ensure that costs specifically not allowable under the  
15 entertainment cost principle (FAR 31.205–14) are not al-  
16 lowable under any other cost principle.

17 (b) *DEFINITIONS.*—In this section:

18 (1) The term “employee” includes officers and  
19 directors of a contractor.

20 (2) The term “covered contract” has the meaning  
21 given such term in section 2324(l) of title 10, United  
22 States Code (as amended by section 2101(b)), or sec-  
23 tion 306(l) of the Federal Property and Administra-  
24 tive Services Act of 1949 (as added by section 2151).

25 (c) *EFFECTIVE DATE.*—The provisions of subsection  
26 (a), including any amendments to the Federal Acquisition

1 *Regulation prescribed under that subsection, shall take ef-*  
 2 *fect in accordance with section 9001.*

3 **PART III—ACQUISITIONS GENERALLY**

4 **SEC. 2161. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-**  
 5 **TORS.**

6 *Section 24(a) of the Office of Federal Procurement Pol-*  
 7 *icy Act (41 U.S.C. 420) is amended by inserting after*  
 8 *“Under any contract” the following: “requiring submission*  
 9 *of cost or pricing data or the negotiation of final indirect*  
 10 *costs”.*

11 **Subtitle C—Audit and Access to**  
 12 **Records**

13 **PART I—ARMED SERVICES ACQUISITIONS**

14 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY**  
 15 **TO EXAMINE RECORDS OF CONTRACTORS.**

16 *(a) AUTHORITY.—*

17 *(1) IN GENERAL.—Section 2313 of title 10, Unit-*  
 18 *ed States Code, is amended to read as follows:*

19 **“§ 2313. Examination of records of contractor**

20 *“(a) AGENCY AUTHORITY.—(1) The head of an agency,*  
 21 *acting through an authorized representative, is authorized*  
 22 *to inspect the plant and audit the records of—*

23 *“(A) a contractor performing a cost-reimburse-*  
 24 *ment, incentive, time-and-materials, labor-hour, or*  
 25 *price-redeterminable contract, or any combination of*

1 *such contracts, made by that agency under this chap-*  
2 *ter; and*

3 *“(B) a subcontractor performing any cost-reim-*  
4 *bursement, incentive, time-and-materials, labor-hour,*  
5 *or price-redeterminable subcontract or any combina-*  
6 *tion of such subcontracts under a contract referred to*  
7 *in subparagraph (A).*

8 *“(2) The head of an agency, acting through an author-*  
9 *ized representative, is authorized, for the purpose of evaluat-*  
10 *ing the accuracy, completeness, and currency of cost or pric-*  
11 *ing data required to be submitted pursuant to section 2306a*  
12 *of this title with respect to a contract or subcontract, to*  
13 *examine all records of the contractor or subcontractor relat-*  
14 *ed to—*

15 *“(A) the proposal for the contract or subcontract;*

16 *“(B) the discussions conducted on the proposal;*

17 *“(C) pricing of the contract or subcontract; or*

18 *“(D) performance of the contract or subcontract.*

19 *“(b) DCAA SUBPOENA AUTHORITY.—(1) The Director*  
20 *of the Defense Contract Audit Agency (or any successor*  
21 *agency) may require by subpoena the production of any*  
22 *records of a contractor that the Secretary of Defense is au-*  
23 *thorized to audit or examine under subsection (a).*

1       “(2) Any such subpoena, in the case of contumacy or  
2 refusal to obey, shall be enforceable by order of an appro-  
3 priate United States district court.

4       “(3) The authority provided by paragraph (1) may not  
5 be redelegated.

6       “(4) The Director (or any successor official) shall sub-  
7 mit an annual report to the Secretary of Defense on the  
8 exercise of such authority during the preceding year and  
9 the reasons why such authority was exercised in any in-  
10 stance. The Secretary shall forward a copy of each such re-  
11 port to the Committees on Armed Services of the Senate  
12 and House of Representatives.

13       “(c) *COMPTROLLER GENERAL AUTHORITY.*—(1) Ex-  
14 cept as provided in paragraph (2), each contract awarded  
15 after using procedures other than sealed bid procedures shall  
16 provide that the Comptroller General and his representa-  
17 tives are authorized to examine any records of the contrac-  
18 tor, or any of its subcontractors, that directly pertain to,  
19 and involve transactions relating to, the contract or sub-  
20 contract.

21       “(2) Paragraph (1) does not apply to a contract or  
22 subcontract with a foreign contractor or foreign subcontrac-  
23 tor if the head of the agency concerned determines, with the  
24 concurrence of the Comptroller General or his designee, that  
25 the application of that paragraph to the contract or sub-

1 *contract would not be in the public interest. However, the*  
2 *concurrence of the Comptroller General or his designee is*  
3 *not required—*

4       “(A) *where the contractor or subcontractor is a*  
5 *foreign government or agency thereof or is precluded*  
6 *by the laws of the country involved from making its*  
7 *records available for examination; and*

8       “(B) *where the head of the agency determines,*  
9 *after taking into account the price and availability of*  
10 *the property and services from United States sources,*  
11 *that the public interest would be best served by not*  
12 *applying paragraph (1).*

13       “(3) *Paragraph (1) may not be construed to require*  
14 *a contractor or subcontractor to create or maintain any*  
15 *record that the contractor or subcontractor does not main-*  
16 *tain in the ordinary course of business or pursuant to an-*  
17 *other provision of law.*

18       “(d) *LIMITATION ON PREAWARD AUDITS RELATING TO*  
19 *INDIRECT COSTS.—The head of an agency may not perform*  
20 *a preaward audit to evaluate proposed indirect costs under*  
21 *any contract, subcontract, or modification to be entered into*  
22 *in accordance with this chapter in any case in which the*  
23 *contracting officer determines that the objectives of the audit*  
24 *can reasonably be met by accepting the results of an audit*  
25 *conducted by any other department or agency of the Federal*

1 *Government within one year preceding the date of the con-*  
2 *tracting officer's determination.*

3       “(e) *LIMITATION.*—*The authority of the head of an*  
4 *agency under subsection (a), and the authority of the Comp-*  
5 *troller General under subsection (c), with respect to a con-*  
6 *tract or subcontract shall expire three years after final pay-*  
7 *ment under such contract or subcontract.*

8       “(f) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—*This*  
9 *section does not apply to the following contracts:*

10           “(1) *Contracts for utility services at rates not ex-*  
11 *ceeding those established to apply uniformly to the*  
12 *public, plus any applicable reasonable connection*  
13 *charge.*

14       “(g) *FORMS OF ORIGINAL RECORD STORAGE.*—*Noth-*  
15 *ing in this section shall be construed to preclude a contrac-*  
16 *tor from duplicating or storing original records in elec-*  
17 *tronic form.*

18       “(h) *USE OF IMAGES OF ORIGINAL RECORDS.*—*The*  
19 *head of an agency shall not require a contractor or sub-*  
20 *contractor to provide original records in an audit carried*  
21 *out pursuant to this section if the contractor or sub-*  
22 *contractor provides photographic or electronic images of the*  
23 *original records and meets the following requirements:*

24           “(1) *The contractor or subcontractor has estab-*  
25 *lished procedures to ensure that the imaging process*

1       *preserves the integrity, reliability, and security of the*  
2       *original records.*

3             “(2) *The contractor or subcontractor maintains*  
4       *an effective indexing system to permit timely and*  
5       *convenient access to the imaged records.*

6             “(3) *The contractor or subcontractor retains the*  
7       *original records for a minimum of one year after im-*  
8       *aging to permit periodic validation of the imaging*  
9       *systems.*

10            “(i) *RECORDS DEFINED.—In this section, the term*  
11       *‘records’ includes books, documents, accounting procedures*  
12       *and practices, and other data, regardless of type and re-*  
13       *gardless of whether such items are in written form, in the*  
14       *form of computer data, or in any other form.”.*

15            (2) *CLERICAL AMENDMENT.—The item relating*  
16       *to such section in the table of sections at the begin-*  
17       *ning of chapter 137 of title 10, United States Code,*  
18       *is amended to read as follows:*

*“2313. Examination of records of contractor.”.*

19            (b) *REPEAL OF SUPERSEDED PROVISION.—*

20            (1) *REPEAL.—Section 2406 of title 10, United*  
21       *States Code, is repealed.*

22            (2) *CLERICAL AMENDMENT.—The table of sec-*  
23       *tions at the beginning of chapter 141 of such title is*  
24       *amended by striking out the item relating to section*  
25       *2406.*



1 *examine all records of the contractor or subcontractor relat-*  
2 *ed to—*

3           “(A) *the proposal for the contract or subcontract;*

4           “(B) *the discussions conducted on the proposal;*

5           “(C) *pricing of the contract or subcontract; or*

6           “(D) *performance of the contract or subcontract.*

7           “(b) *COMPTROLLER GENERAL AUTHORITY.—(1) Ex-*  
8 *cept as provided in paragraph (2), each contract awarded*  
9 *after using procedures other than sealed bid procedures shall*  
10 *provide that the Comptroller General and his representa-*  
11 *tives are authorized to examine any records of the contrac-*  
12 *tor, or any of its subcontractors, that directly pertain to,*  
13 *and involve transactions relating to, the contract or sub-*  
14 *contract.*

15           “(2) *Paragraph (1) does not apply to a contract or*  
16 *subcontract with a foreign contractor or foreign subcontrac-*  
17 *tor if the executive agency concerned determines, with the*  
18 *concurrence of the Comptroller General or his designee, that*  
19 *the application of that paragraph to the contract or sub-*  
20 *contract would not be in the public interest. However, the*  
21 *concurrence of the Comptroller General or his designee is*  
22 *not required—*

23           “(A) *where the contractor or subcontractor is a*  
24 *foreign government or agency thereof or is precluded*

1       *by the laws of the country involved from making its*  
2       *records available for examination; and*

3               *“(B) where the executive agency determines, after*  
4       *taking into account the price and availability of the*  
5       *property and services from United States sources, that*  
6       *the public interest would be best served by not apply-*  
7       *ing paragraph (1).*

8               *“(3) Paragraph (1) may not be construed to require*  
9       *a contractor or subcontractor to create or maintain any*  
10       *record that the contractor or subcontractor does not main-*  
11       *tain in the ordinary course of business or pursuant to an-*  
12       *other provision of law.*

13               *“(c) LIMITATION ON PREAWARD AUDITS RELATING TO*  
14       *INDIRECT COSTS.—An executive agency may not perform*  
15       *a preaward audit to evaluate proposed indirect costs under*  
16       *any contract, subcontract, or modification to be entered into*  
17       *in accordance with this title in any case in which the con-*  
18       *tracting officer determines that the objectives of the audit*  
19       *can reasonably be met by accepting the results of an audit*  
20       *conducted by any other department or agency of the Federal*  
21       *Government within one year preceding the date of the con-*  
22       *tracting officer’s determination.*

23               *“(d) LIMITATION.—The authority of an executive agen-*  
24       *cy under subsection (a), and the authority of the Comptrol-*  
25       *ler General under subsection (b), with respect to a contract*

1 *or subcontract shall expire three years after final payment*  
2 *under such contract or subcontract.*

3 *“(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—This*  
4 *section does not apply to the following contracts:*

5 *“(1) Contracts for utility services at rates not ex-*  
6 *ceeding those established to apply uniformly to the*  
7 *public, plus any applicable reasonable connection*  
8 *charge.*

9 *“(f) FORM OF ORIGINAL RECORD STORAGE.—Nothing*  
10 *in this section shall be construed to preclude a contractor*  
11 *from duplicating or storing original records in electronic*  
12 *form.*

13 *“(g) USE OF IMAGES OF ORIGINAL RECORDS.—An ex-*  
14 *ecutive agency shall not require a contractor or subcontrac-*  
15 *tor to provide original records in an audit carried out pur-*  
16 *suant to this section if the contractor or subcontractor pro-*  
17 *vides photographic or electronic images of the original*  
18 *records and meets the following requirements:*

19 *“(1) The contractor or subcontractor has estab-*  
20 *lished procedures to ensure that the imaging process*  
21 *preserves the integrity, reliability, and security of the*  
22 *original records.*

23 *“(2) The contractor or subcontractor maintains*  
24 *an effective indexing system to permit timely and*  
25 *convenient access to the imaged records.*

1           “(3) *The contractor or subcontractor retains the*  
2           *original records for a minimum of one year after im-*  
3           *aging to permit periodic validation of the imaging*  
4           *systems.*

5           “(h) *RECORDS DEFINED.—In this section, the term*  
6           *‘records’ includes books, documents, accounting procedures*  
7           *and practices, and other data, regardless of type and re-*  
8           *gardless of whether such items are in written form, in the*  
9           *form of computer data, or in any other form.’”.*

10          “(b) *REPEAL OF SUPERSEDED PROVISION.—Section*  
11          *304 of the Federal Property and Administrative Services*  
12          *Act of 1949 (41 U.S.C. 254) is amended by striking out*  
13          *subsection (c).*

14                    ***Subtitle D—Cost Accounting***  
15                    ***Standards***

16          ***SEC. 2301. REPEAL OF OBSOLETE DEADLINE REGARDING***  
17                    ***PROCEDURAL REGULATIONS FOR THE COST***  
18                    ***ACCOUNTING STANDARDS BOARD.***

19          *Section 26(f)(3) of the Office of Federal Procurement*  
20          *Policy Act (41 U.S.C. 422(f)(3)) is amended in the first*  
21          *sentence by striking out “Not later than 180 days after the*  
22          *date of enactment of this section, the Administrator” and*  
23          *inserting in lieu thereof “The Administrator”.*

1 **Subtitle E—Administration of Con-**  
2 **tract Provisions Relating to**  
3 **Price, Delivery, and Product**  
4 **Quality**

5 **SEC. 2401. CLARIFICATION OF PROVISION RELATING TO**  
6 **QUALITY CONTROL OF CERTAIN SPARE**  
7 **PARTS.**

8 *The second sentence of subsection (a) of section 2383*  
9 *of title 10, United States Code, is amended to read as fol-*  
10 *lows: “In establishing the appropriate qualification require-*  
11 *ments, the Secretary of Defense shall use the Department*  
12 *of Defense qualification requirements that were used to*  
13 *qualify the original production part unless the Secretary*  
14 *determines in writing—*

15 *“(1) that there are other requirements suffi-*  
16 *ciently similar to those requirements that should be*  
17 *used instead; or*

18 *“(2) that any or all such requirements are un-*  
19 *necessary.”.*

20 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**  
21 **ON SYSTEMS.**

22 *(a) REPEAL OF REQUIREMENT FOR REPORT ON WAIV-*  
23 *ERS.—Subsection (e) of section 2403 of title 10, United*  
24 *States Code, is amended—*

25 *(1) by striking out “(1)”; and*

1           (2) by striking out paragraph (2).

2           (b) *PROVISIONS TO BE ADDRESSED BY REGULA-*  
3 *TIONS.*—Subsection (h) of such section is amended—

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

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

8           “(2) The regulations shall include the following:

9           “(A) Guidelines for negotiating contractor guar-  
10 antees that are reasonable and cost effective, as deter-  
11 mined on the basis of the likelihood of defects and the  
12 estimated cost of correcting such defects.

13           “(B) Procedures for administering contractor  
14 guarantees.

15           “(C) Guidelines for determining the cases in  
16 which it may be appropriate to waive the require-  
17 ments of this section.”.

## 18       ***Subtitle F—Claims and Disputes***

### 19       ***SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.***

20           (a) *DOD CERTIFICATION REQUIREMENT IN CONFLICT*  
21 *WITH GOVERNMENT-WIDE REQUIREMENT.*—

22           (1) *REPEAL.*—Section 2410 of title 10, United  
23 States Code, is repealed.

24           (2) *CLERICAL AMENDMENT.*—The table of sec-  
25 tions at the beginning of chapter 141 of such title is

1        *amended by striking out the item relating to section*  
2        *2410.*

3        *(b) REPEAL OF SUPERSEDED PROVISION.—Section*  
4        *813(b) of the National Defense Authorization Act for Fiscal*  
5        *Year 1993 (Public Law 102–484; 106 Stat. 2453), is re-*  
6        *pealed.*

7        *(c) RESTRICTION ON LEGISLATIVE PAYMENT OF*  
8        *CLAIMS.—Section 2410e of title 10, United States Code, is*  
9        *amended by adding at the end the following new subsection:*

10        *“(d) RESTRICTION ON LEGISLATIVE PAYMENT OF*  
11        *CLAIMS.—In the case of a contract of an agency named in*  
12        *section 2303(a) of this title, no provision of a law enacted*  
13        *after the date of the enactment of the Federal Acquisition*  
14        *Improvement Act of 1994 that directs the payment of a par-*  
15        *ticular claim under such contract, a particular request for*  
16        *equitable adjustment to any term of such contract, or a par-*  
17        *ticular request for relief under Public Law 85–804 (50*  
18        *U.S.C. 1431 et seq.) regarding such contract may be imple-*  
19        *mented unless such provision of law—*

20                *“(1) specifically refers to this subsection; and*

21                *“(2) specifically states that this subsection does*  
22        *not apply with respect to the payment directed by*  
23        *that provision of law.”.*

1 **SEC. 2502. SHIPBUILDING CLAIMS.**

2 (a) *INCREASE IN TIME PERIOD DURING WHICH AD-*  
3 *JUSTMENTS TO SHIPBUILDING CLAIMS MAY BE MADE.—*

4 *Section 2405 of title 10, United States Code, is amended—*

5 (1) *in subsection (a)—*

6 (A) *by striking out “entered into after De-*  
7 *cember 7, 1983,”; and*

8 (B) *by striking out “occurring more than*  
9 *18 months before the submission of the claim, re-*  
10 *quest, or demand.” and inserting in lieu thereof*  
11 *the following: “occurring—*

12 *“(1) in the case of a contract entered into after*  
13 *December 7, 1983, and before the date of the enact-*  
14 *ment of the Federal Acquisition Improvement Act of*  
15 *1994, more than 18 months before the submission of*  
16 *the claim, request, or demand; and*

17 *“(2) in the case of a contract entered into on or*  
18 *after the date of the enactment of the Federal Acquisi-*  
19 *tion Improvement Act of 1994, more than 6 years be-*  
20 *fore the submission of the claim, request, or demand.”.*

21 (b) *RESUBMISSION WITH CORRECTED CERTIFI-*  
22 *CATION.—Subsection (c) of such section is repealed.*

1 **TITLE III—MAJOR SYSTEMS AND**  
2 **SERVICE SPECIFIC STATUTES**  
3 **Subtitle A—Major Systems Statutes**

4 **SEC. 3001. WEAPON DEVELOPMENT AND PROCUREMENT**  
5 **SCHEDULES.**

6 (a) *DEADLINE AND PURPOSE.*—Subsection (a) of sec-  
7 tion 2431 of title 10, United States Code, is amended—

8 (1) *in the first sentence—*

9 (A) *by striking out “at the same time” and*  
10 *inserting in lieu thereof “not later than 45 days*  
11 *after”;* and

12 (B) *by striking out “a written report” and*  
13 *inserting in lieu thereof “budget justification*  
14 *documents”;* and

15 (2) *in the second and third sentences, by striking*  
16 *out “report” and inserting in lieu thereof “docu-*  
17 *ments”.*

18 (b) *ADDITIONAL MATTERS TO BE INCLUDED.*—Sub-  
19 *section (b) of such section is amended—*

20 (1) *by striking out “include—” and inserting in*  
21 *lieu thereof “include each of the following:”;*

22 (2) *by capitalizing the first letter of the first*  
23 *word in each of paragraphs (1), (2), and (3);*

1           (3) by striking out the semicolon at the end of  
2 paragraphs (1) and (2) and inserting in lieu thereof  
3 a period;

4           (4) by striking out “; and” at the end of para-  
5 graph (3) and inserting in lieu thereof a period; and

6           (5) by amending paragraph (4) to read as fol-  
7 lows:

8           “(4)(A) The most efficient production rate, the  
9 most efficient acquisition rate, and the minimum sus-  
10 taining rate, consistent with the program priority es-  
11 tablished for such weapon system by the Secretary  
12 concerned.

13           “(B) In this paragraph:

14           “(i) The term ‘most efficient production  
15 rate’ means the maximum rate for each budget  
16 year at which the weapon system can be pro-  
17 duced with existing or planned plant capacity  
18 and tooling, with one shift a day running for  
19 eight hours a day and five days a week.

20           “(ii) The term ‘minimum sustaining rate’  
21 means the production rate for each budget year  
22 that is necessary to keep production lines open  
23 while maintaining a base of responsive vendors  
24 and suppliers.”.

1 **SEC. 3002. SELECTED ACQUISITION REPORT REQUIREMENT.**

2 (a) *DEFINITION OF PROCUREMENT UNIT COST.*—

3 (1) *DEFINITION.*—Paragraph (2) of section  
4 2432(a) of title 10, United States Code, is amended—

5 (A) in clause (A), by striking out “for a fis-  
6 cal year” and all that follows through “such pro-  
7 gram in such fiscal year”;

8 (B) in clause (B), by striking out “with  
9 such funds during such fiscal year.” and insert-  
10 ing in lieu thereof a period; and

11 (C) by striking out the last sentence.

12 (2) *CONFORMING AMENDMENTS.*—Section 2433  
13 of such title is amended—

14 (A) in subparagraph (B) of subsection  
15 (c)(1), by striking out “current” before “procure-  
16 ment unit cost”;

17 (B) in subsection (d), by striking out “cur-  
18 rent” before “procurement unit cost” each place  
19 it appears; and

20 (C) in subsection (e), by striking out “cur-  
21 rent” before “procurement unit cost” both places  
22 it appears.

23 (b) *EXCLUSION OF FIRM, FIXED-PRICE CONTRACTS.*—

24 Subsection (a) of section 2432 of such title is amended in  
25 paragraph (3) by inserting before the period at the end the  
26 following: “and that is not a firm, fixed price contract”.

1           (c) *DEFINITION OF FULL LIFE-CYCLE COST.*—Such  
2 subsection is further amended in paragraph (4) by striking  
3 out “has the meaning” and all that follows through the end  
4 of the paragraph and inserting in lieu thereof the following:  
5 “means all costs of development, procurement, military con-  
6 struction, and operations and support, without regard to  
7 funding source or management control.”.

8           (d) *NOTICE OF PROPOSED CHANGES IN SAR.*—Sub-  
9 section (c) of such section is amended in paragraph (2) by  
10 striking out the second sentence and inserting in lieu thereof  
11 the following: “Whenever the Secretary of Defense proposes  
12 to make changes in the content of a Selected Acquisition  
13 Report, the Secretary shall submit a notice of the proposed  
14 changes to such committees. The changes shall be considered  
15 approved by the Secretary, and may be incorporated into  
16 the report, only after the end of the 60-day period beginning  
17 on the date on which the notice is received by those commit-  
18 tees.”.

19           (e) *ELIMINATION OF CERTAIN SAR REQUIREMENTS.*—  
20 Such subsection is further amended in paragraph (3) by  
21 striking out subparagraph (C).

22           (f) *UNIFORM IMPLEMENTATION OF LIFE-CYCLE COST*  
23 *ANALYSIS.*—Such subsection is further amended—  
24           (1) by striking out paragraph (5); and

1           (2) *by adding at the end of subparagraph (A) of*  
2 *paragraph (3) the following: “The Secretary of De-*  
3 *fense shall ensure that this subparagraph is imple-*  
4 *mented in a uniform manner, to the extent prac-*  
5 *ticable, throughout the Department of Defense.”.*

6           (g) *DEADLINE REVISION.*—*Subsection (f) of such sec-*  
7 *tion is amended by striking out “60 days” in the first sen-*  
8 *tence and inserting in lieu thereof “45 days”.*

9           (h) *ELIMINATION OF PRELIMINARY REPORT.*—*Such*  
10 *subsection is further amended by striking out the second*  
11 *sentence.*

12          (i) *TERMINOLOGY CORRECTIONS.*—*Such section is fur-*  
13 *ther amended as follows:*

14           (1) *Subsection (b)(3)(A) is amended by striking*  
15 *out “full scale development or” in clause (i).*

16           (2) *Subsection (c)(3) is amended by striking out*  
17 *“full-scale engineering” in subparagraph (A) and in-*  
18 *serting in lieu thereof “engineering and manufactur-*  
19 *ing”.*

20           (3) *Subsection (h)(1) is amended by striking out*  
21 *“full-scale engineering” both places it appears and in-*  
22 *serting in lieu thereof “engineering and manufactur-*  
23 *ing”.*

24 **SEC. 3003. UNIT COST REPORT REQUIREMENT.**

25           (a) *REVISION OF BASELINE REPORT DEFINITIONS.*—

1           (1) *REVISION.*—Section 2433(a) of title 10,  
2           *United States Code, is amended—*

3                   (A) *in paragraph (2)—*

4                           (i) *by striking out “Baseline Selected*  
5                           *Acquisition Report” and inserting in lieu*  
6                           *thereof “Baseline Estimate”; and*

7                           (ii) *by striking out “Selected Acquisi-*  
8                           *tion Report in which” and all that follows*  
9                           *through the end of the paragraph and in-*  
10                           *serting in lieu thereof “cost estimate in-*  
11                           *cluded in the baseline description for the*  
12                           *program under section 2435 of this title.”;*  
13                           *and*

14                           (B) *by striking out paragraph (4).*

15           (2) *CONFORMING AMENDMENTS.*—Section 2433  
16           *of such title is further amended—*

17                   (A) *in subsection (c)(1), by striking out*  
18                   *“Baseline Report” in subparagraphs (A) and*  
19                   *(B) and inserting in lieu thereof “Baseline Esti-*  
20                   *mate”; and*

21                   (B) *in subsection (d), by striking out “Base-*  
22                   *line Report” in paragraphs (1) and (2) and in-*  
23                   *serting in lieu thereof “Baseline Estimate”.*

24           (b) *CONTENTS OF UNIT COST REPORT.*—Section  
25           2433(b) of such title is amended in paragraph (3) by strik-

1 *ing out “Baseline Report was submitted.” and inserting in*  
2 *lieu thereof “contract was entered into.”*

3 *(c) ELIMINATION OF CERTAIN UNIT COST REPORT RE-*  
4 *QUIREMENT.—Section 2433(c) of such title, as amended by*  
5 *subsection (a), is further amended—*

6 *(1) by striking out paragraph (2);*

7 *(2) by striking out “(1)” after “(c)”; and*

8 *(3) by redesignating subparagraphs (A), (B),*  
9 *and (C) as paragraphs (1), (2), and (3), respectively.*

10 *(d) CONSTANT BASE YEAR DOLLARS.—Section 2433(f)*  
11 *of such title is amended by striking out “include expected*  
12 *inflation” and inserting in lieu thereof “be stated in terms*  
13 *of constant base year dollars (as described in section 2430*  
14 *of this title)”.*

15 *(e) CONTENTS OF SAR.—Subparagraph (I) of section*  
16 *2433(g)(1) of such title is amended to read as follows:*

17 *“(I) The type of the Baseline Estimate that was*  
18 *included in the baseline description under section*  
19 *2435 of this title and the date of the Baseline Esti-*  
20 *mate.”.*

1 **SEC. 3004. REQUIREMENT FOR INDEPENDENT COST ESTI-**  
2 **MATE AND MANPOWER ESTIMATE BEFORE**  
3 **DEVELOPMENT OR PRODUCTION.**

4 (a) *CONTENT AND SUBMISSION OF ESTIMATES.*—Sub-  
5 section (b) of section 2434 of title 10, United States Code,  
6 is amended to read as follows:

7 “(b) *REGULATIONS.*—The Secretary of Defense shall  
8 prescribe regulations governing the content and submission  
9 of the estimates required by subsection (a). The regulations  
10 shall require—

11 “(1) that the independent estimate of the full  
12 life-cycle cost of a program—

13 “(A) be prepared by an office or other en-  
14 tity that is not directly responsible for carrying  
15 out the development or acquisition of the pro-  
16 gram; and

17 “(B) include all costs of development, pro-  
18 curement, military construction, and operations  
19 and support, without regard to funding source or  
20 management control; and

21 “(2) that the manpower estimate include the  
22 total personnel required—

23 “(A) to operate, maintain, and support the  
24 program upon full operational deployment; and

25 “(B) to train personnel to carry out the ac-  
26 tivities referred to in subparagraph (A).”

1       (b) *TERMINOLOGY CORRECTION, ETC.*—Subsection (a)  
2 of such section is amended—

3           (1) by striking out “full-scale engineering devel-  
4 opment” and inserting in lieu thereof “engineering  
5 and manufacturing development”; and

6           (2) by striking out “cost of the program, together  
7 with a manpower estimate, has” and inserting in lieu  
8 thereof “full life-cycle cost of the program and a man-  
9 power estimate have”.

10 **SEC. 3005. BASELINE DESCRIPTION.**

11       (a) *IN GENERAL.*—Section 2435 of title 10, United  
12 States Code, is amended to read as follows:

13 **“§ 2435. Baseline description**

14       “(a) *BASELINE DESCRIPTION REQUIREMENT.*—(1)  
15 The Secretary of a military department shall establish a  
16 baseline description for each major defense acquisition pro-  
17 gram under the jurisdiction of such Secretary.

18       “(2) The baseline shall include sufficient parameters  
19 to describe the cost estimate (referred to as the ‘Baseline  
20 Estimate’ in section 2433 of this title), schedule, and per-  
21 formance of such major defense acquisition program.

22       “(3) No amount appropriated or otherwise made  
23 available to the Department of Defense for carrying out a  
24 major defense acquisition program may be obligated with-  
25 out an approved baseline description unless such obligation

1 *is specifically approved by the Under Secretary of Defense*  
2 *for Acquisition and Technology.*

3       “(4) A baseline description for a major defense acqui-  
4 *sition program shall be established—*

5               “(A) *before the program enters engineering and*  
6 *manufacturing development; or*

7               “(B) *before the program enters production and*  
8 *deployment.*

9       “(b) *REGULATIONS.—The Secretary of Defense shall*  
10 *prescribe regulations governing—*

11               “(1) *the content of baseline descriptions;*

12               “(2) *the submission of reports on deviations of a*  
13 *program from the baseline description by the program*  
14 *manager to the Secretary of the military department*  
15 *concerned and the Under Secretary of Defense for Ac-*  
16 *quisition and Technology;*

17               “(3) *procedures for review of such deviation re-*  
18 *ports within the Department of Defense; and*

19               “(4) *procedures for submission to, and approval*  
20 *by, the Secretary of Defense of revised baseline de-*  
21 *scriptions.”.*

22       “(b) *CLERICAL AMENDMENT.—The table of sections at*  
23 *the beginning of chapter 144 of such title is amended by*  
24 *amending the item relating to section 2435 to read as fol-*  
25 *lows:*

*“2435. Baseline description.”.*

1 **SEC. 3006. REPEAL OF REQUIREMENT FOR COMPETITIVE**  
 2 **PROTOTYPING FOR MAJOR PROGRAMS.**

3 (a) *REPEAL.*—Section 2438 of title 10, United States  
 4 Code, is repealed.

5 (b) *CLERICAL AMENDMENT.*—The table of sections at  
 6 the beginning of chapter 144 of such title is amended by  
 7 striking out the item relating to section 2438.

8 **SEC. 3007. REPEAL OF REQUIREMENT FOR COMPETITIVE**  
 9 **ALTERNATIVE SOURCES FOR MAJOR PRO-**  
 10 **GRAMS.**

11 (a) *REPEAL.*—Section 2439 of title 10, United States  
 12 Code, is repealed.

13 (b) *CLERICAL AMENDMENT.*—The table of sections at  
 14 the beginning of chapter 144 of such title is amended by  
 15 striking out the item relating to section 2439.

16 **Subtitle B—Testing Statutes**

17 **SEC. 3011. AUTHORIZATION OF LESS THAN FULL-UP TEST-**  
 18 **ING.**

19 Section 2366(c) of title 10, United States Code, is  
 20 amended—

21 (1) by redesignating paragraph (2) as para-  
 22 graph (4);

23 (2) by designating the second sentence of para-  
 24 graph (1) as paragraph (3) and in that paragraph by  
 25 striking out “such certification” and inserting in lieu

1       *thereof “certification under paragraph (1) or (2)”;*  
2       *and*

3               *(3) by inserting before paragraph (3) (as so des-*  
4       *ignated) the following new paragraph:*

5       *“(2) In the case of a covered system (or covered product*  
6       *improvement program for a covered system), the Secretary*  
7       *may waive the application of the survivability and lethality*  
8       *tests of this section to such system or program and instead*  
9       *allow testing of the system or program in combat by firing*  
10       *munitions likely to be encountered in combat at compo-*  
11       *nents, subsystems, and subassemblies, together with per-*  
12       *forming design analyses, modeling and simulation, and*  
13       *analysis of combat data, if the Secretary certifies to Con-*  
14       *gress that the survivability and lethality testing of such sys-*  
15       *tem or program otherwise required by this section would*  
16       *be unreasonably expensive and impracticable.”.*

17       ***SEC. 3012. LIMITATION ON QUANTITIES TO BE PROCURED***  
18                       ***FOR LOW-RATE INITIAL PRODUCTION.***

19       *Section 2400(a) of title 10, United States Code, is*  
20       *amended—*

21               *(1) in paragraph (2)—*

22                       *(A) by striking out “paragraph (1)” and*  
23       *inserting in lieu thereof “this section”; and*



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

3           “(5) The Secretary of Defense may, for a particular  
4           major defense acquisition program, prescribe and apply  
5           operational test and evaluation procedures other than those  
6           provided under subsection (a) and paragraphs (1) through  
7           (3) of this subsection if the Secretary transmits to Congress,  
8           before the Milestone II decision is made with respect to that  
9           program—

10           “(A) a certification that such testing would be  
11           unreasonably expensive and impracticable; and

12           “(B) a description of the actions taken to ensure  
13           that the system will be operationally effective and  
14           suitable when the system meets initial operational ca-  
15           pability requirements.”.

16           (b) *CROSS REFERENCE CORRECTIONS.*—Section 2399  
17           of such title is further amended—

18           (1) in subsection (b)(6) (as redesignated by sub-  
19           section (a)(1)) and subsection (c)(1), by striking out  
20           “section 138(a)(2)(B)” and inserting in lieu thereof  
21           “section 139(a)(2)(B)”; and

22           (2) in subsection (h)(1), by striking out “section  
23           138(a)(2)(A)” and inserting in lieu thereof “section  
24           139(a)(2)(A)”.

1     **Subtitle C—Civil Reserve Air Fleet**

2     **SEC. 3021. DEFINITION OF CONTRACTOR.**

3         *Section 9511(8) of title 10, United States Code, is*  
4     *amended—*

5             (1) *by striking out “or” at the end of clause (A);*

6             *and*

7             (2) *by inserting before the period at the end the*  
8             *following: “; or (C) who owns or controls, or will own*  
9             *or control, new or existing aircraft and who, by con-*  
10            *tract, commits some or all of such aircraft to the Civil*  
11            *Reserve Air Fleet”.*

12     **SEC. 3022. CONSOLIDATION OF PROVISIONS RELATING TO**  
13             **CONTRACTUAL COMMITMENT OF AIRCRAFT.**

14         *Chapter 931 of title 10, United States Code, is amend-*  
15     *ed—*

16             (1) *in subsection (a) of section 9512, by inserting*  
17             *“AUTHORITY TO CONTRACT.—” after “(a)”;*

18             (2) *in subsection (c) of section 9512, by striking*  
19             *out “(c)” and inserting in lieu thereof “(d) AUTHOR-*  
20             *ITY TO CONTRACT AND PAY DIRECTLY.—”;*

21             (3) *in subsection (b) of section 9512, by striking*  
22             *out “(b)” and inserting in lieu thereof “(c) TERMS*  
23             *AND REQUIRED REPAYMENT.—”;*

24             (4) *by redesignating subsection (a) of section*  
25             *9513 as subsection (b) and transferring such sub-*

1 *section (as so redesignated) to section 9512 and in-*  
2 *serting such subsection after subsection (a);*

3 *(5) by redesignating subsection (b) of section*  
4 *9513 as subsection (e) and transferring such sub-*  
5 *section (as so redesignated) to the end of section 9512;*

6 *(6) in subsection (b) of section 9512, as redesi-*  
7 *gnated and transferred to such section by paragraph*  
8 *(4)—*

9 *(A) by striking out “under section 9512 of*  
10 *this title” and inserting in lieu thereof “entered*  
11 *into under this section”, and*

12 *(B) by inserting “CONTRACT REQUIRE-*  
13 *MENTS.—” after “(b)”;*

14 *(7) in subsection (c) of section 9512, as redesi-*  
15 *gnated by paragraph (3), by striking out “the terms*  
16 *required by section 9513 of this title and”;*

17 *(8) in subsection (e) of section 9512, as redesi-*  
18 *gnated and transferred to such section by paragraph*  
19 *(5)—*

20 *(A) by striking out “under section 9512 of*  
21 *this title” and inserting in lieu thereof “entered*  
22 *into under this section”, and*

23 *(B) by inserting “COMMITMENT TO CIVIL*  
24 *RESERVE AIR FLEET.—” after “(e)”;* and

25 *(9) by striking out the heading of section 9513.*

1 **SEC. 3023. USE OF MILITARY INSTALLATIONS BY CONTRAC-**  
2 **TORS.**

3 (a) *AUTHORITY.*—Chapter 931 of title 10, United  
4 States Code, as amended by section 3022, is further amend-  
5 ed by adding at the end the following new section 9513:

6 **“§9513. Use of military installations by Civil Reserve**  
7 **Air Fleet contractors**

8 “(a) *CONTRACT AUTHORITY.*—(1) The Secretary of the  
9 Air Force—

10 “(A) may, by contract entered into with any  
11 contractor, authorize such contractor to use one or  
12 more Air Force installations designated by the Sec-  
13 retary; and

14 “(B) with the consent of the Secretary of another  
15 military department, may, by contract entered into  
16 with any contractor, authorize the contractor to use  
17 one or more installations, designated by the Secretary  
18 of the Air Force, that is under the jurisdiction of the  
19 Secretary of such other military department.

20 “(2) The Secretary of the Air Force may include in  
21 the contract such terms and conditions as the Secretary de-  
22 termines appropriate to promote the national defense or to  
23 protect the interests of the United States.

24 “(b) *PURPOSES OF USE.*—A contract entered into  
25 under subsection (a) may authorize use of a designated in-  
26 stallation as a weather alternate, as a technical stop not

1 *involving the enplaning or deplaning of passengers or*  
2 *cargo, or, in the case of an installation within the United*  
3 *States, for other commercial purposes. Notwithstanding any*  
4 *other provision of the law, the Secretary may establish dif-*  
5 *ferent levels and types of uses for different installations and*  
6 *may provide in contracts under subsection (a) for different*  
7 *levels and types of uses by different contractors.*

8       “(c) *HOLD HARMLESS REQUIREMENT.*—A contract  
9 *entered into under subsection (a) shall provide that the con-*  
10 *tractor agrees to indemnify and hold harmless the Air Force*  
11 *(and any other armed force having jurisdiction over any*  
12 *installation covered by the contract) from any action, suit,*  
13 *or claim of any sort resulting from, relating to, or arising*  
14 *out of any activities conducted, or services or supplies fur-*  
15 *nished, in connection with the contract.*

16       “(d) *RESERVATION OF RIGHT TO EXCLUDE CONTRAC-*  
17 *TOR.*—A contract entered into under subsection (a) shall  
18 *provide that the Secretary concerned may, without provid-*  
19 *ing prior notice, deny access to an installation designated*  
20 *under the contract when the Secretary determines that it*  
21 *is necessary to do so in order to meet military exigencies.”.*

22       (b) *CLERICAL AMENDMENT.*—The table of sections at  
23 *the beginning of such chapter is amended by striking out*  
24 *the item relating to section 9513 and inserting in lieu there-*  
25 *of the following:*

*“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.*

1                   **Subtitle D—Miscellaneous**

2   **SEC. 3051. REGULATIONS ON PROCUREMENT, PRODUCTION,**  
3                   **WAREHOUSING, AND SUPPLY DISTRIBUTION**  
4                   **FUNCTIONS.**

5           (a) *IN GENERAL.*—Section 2202 of title 10, United  
6 States Code, is amended to read as follows:

7   **“§ 2202. Regulations on procurement, production,**  
8                   **warehousing, and supply distribution**  
9                   **functions**

10           *“The Secretary of Defense shall prescribe regulations*  
11 *governing the performance within the Department of De-*  
12 *fense of the procurement, production, warehousing, and*  
13 *supply distribution functions, and related functions, of the*  
14 *Department of Defense.”.*

15           (b) *CLERICAL AMENDMENT.*—The item relating to sec-  
16 tion 2202 in the table of sections at the beginning of chapter  
17 131 of such title is amended to read as follows:

*“2202. Regulations on procurement, production, warehousing, and supply dis-  
tribution functions.”.*

18   **SEC. 3052. REPEAL OF REQUIREMENTS REGARDING PROD-**  
19                   **UCT EVALUATION ACTIVITIES.**

20           (a) *REPEAL.*—Section 2369 of title 10, United States  
21 Code, is repealed.

22           (b) *CLERICAL AMENDMENT.*—The table of sections at  
23 the beginning of chapter 139 of such title is amended by  
24 striking out the item relating to section 2369.

1 **SEC. 3053. CODIFICATION AND REVISION OF LIMITATION**  
2 **ON LEASE OF VESSELS, AIRCRAFT, AND VEHI-**  
3 **CLES.**

4 (a) *LIMITATION.*—(1) Chapter 141 of title 10, United  
5 States Code, is amended by inserting after section 2401 the  
6 following new section:

7 **“§ 2401a. Lease of vessels, aircraft, and vehicles**

8 “The Secretary of Defense or the Secretary of a mili-  
9 tary department may not enter into any contract with a  
10 term of 18 months or more, or extend or renew any contract  
11 for a term of 18 months or more, for any vessel, aircraft,  
12 or vehicle, through a lease, charter, or similar agreement,  
13 unless the Secretary has considered all costs of such contract  
14 (including estimated termination liability) and has deter-  
15 mined in writing that the contract is in the best interest  
16 of the Government.”.

17 (2) The table of sections at the beginning of such chap-  
18 ter is amended by inserting after the item relating to section  
19 2401 the following new item:

“2401a. Lease of vessels, aircraft, and vehicles.”.

20 (b) *REPEAL OF SUPERSEDED PROVISION.*—Section  
21 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.  
22 2401 note) is repealed.

1 **SEC. 3054. REPEAL OF APPLICATION OF PUBLIC CON-**  
 2 **TRACTS ACT TO CERTAIN NAVAL VESSEL**  
 3 **CONTRACTS.**

4 (a) *REPEAL.*—Section 7299 of title 10, United States  
 5 Code, is repealed.

6 (b) *CLERICAL AMENDMENT.*—The table of sections at  
 7 the beginning of chapter 633 of such title is amended by  
 8 striking out the item relating to section 7299.

9 **TITLE IV—SIMPLIFIED ACQUI-**  
 10 **SITION THRESHOLD AND SO-**  
 11 **CIOECONOMIC, SMALL BUSI-**  
 12 **NESS, AND MISCELLANEOUS**  
 13 **LAWS**

14 **Subtitle A—Simplified Acquisition**  
 15 **Threshold**

16 **PART I—ESTABLISHMENT OF THRESHOLD**

17 **SEC. 4001. ESTABLISHMENT OF SIMPLIFIED ACQUISITION**  
 18 **THRESHOLD.**

19 (a) *ESTABLISHMENT.*—The Office of Federal Procure-  
 20 ment Policy Act (41 U.S.C. 401 et seq.) is amended by in-  
 21 serting after section 4 the following new section:

22 **“SEC. 4A. SIMPLIFIED ACQUISITION THRESHOLD.**

23 *“(a) IN GENERAL.*—The simplified acquisition thresh-  
 24 old for purposes of Federal acquisitions is (except as pro-  
 25 vided in subsection (b)) the amount of \$25,000, as adjusted  
 26 pursuant to subsection (c).

1       “(b) *AGENCIES WITH FACNET CAPABILITY.*—In the  
2 case of an executive agency, or a procuring activity of an  
3 executive agency, for which there is in effect a certification  
4 under 2302b(c) of title 10, United States Code, or section  
5 302B(c) of the Federal Property and Administrative Serv-  
6 ices Act of 1949 with respect to implementation of a  
7 FACNET capability, the simplified acquisition threshold is  
8 the amount of \$100,000, as adjusted pursuant to subsection  
9 (c).

10       “(c) *PERIODIC ADJUSTMENT FOR INFLATION.*—The  
11 dollar amount in effect under subsection (a) shall be ad-  
12 justed on October 1 of each year divisible by 5 to the equiva-  
13 lent amount in constant fiscal year 1990 dollars (rounded  
14 to the nearest \$1,000). The dollar amount in effect under  
15 subsection (b) shall be adjusted on October 1 of each year  
16 divisible by 5 to the equivalent amount in constant fiscal  
17 year 1993 dollars (rounded to the nearest \$1,000).

18       “(d) *SPECIAL RULE FOR CONTINGENCY OPER-*  
19 *ATIONS.*—In the case of a contract to be awarded and per-  
20 formed, or a purchase to be made, outside the United States  
21 in support of a contingency operation (as defined in section  
22 101(a)(13) of title 10, United States Code), the amounts  
23 in effect under subsections (a) and (b) shall be two times  
24 the amounts otherwise applicable.”.

1           (b) *CONFORMING AMENDMENT TO DEFINITION.*—Sec-  
2   tion 4 of such Act is amended by striking out paragraph  
3   (11).

4   **SEC. 4002. FEDERAL ACQUISITION COMPUTER NETWORK**  
5                                   **ARCHITECTURE.**

6           (a) *FEDERAL ACQUISITION COMPUTER NETWORK AR-*  
7   *CHITECTURE.*—The Office of Federal Procurement Policy  
8   Act (41 U.S.C. 401 et seq.), as amended by section 1092,  
9   is further amended by adding at the end the following new  
10 section:

11   **“SEC. 30. FEDERAL ACQUISITION COMPUTER NETWORK**  
12                                   **(FACNET) ARCHITECTURE.**

13           “(a) *IN GENERAL.*—(1) The Administrator shall estab-  
14   lish a program for the development and implementation of  
15   a Federal acquisition computer network architecture (here-  
16   inafter in this section referred to as ‘FACNET’). The Ad-  
17   ministrator shall assign a program manager for FACNET  
18   and shall provide for overall direction of policy and leader-  
19   ship in the development, coordination, installation, oper-  
20   ation, and completion of implementation of FACNET by  
21   executive agencies.

22           “(2) In carrying out paragraph (1), the Administrator  
23   shall consult with appropriate Federal agencies with appli-  
24   cable technical and functional expertise, including the Of-  
25   fice of Information and Regulatory Affairs, the National

1 *Institute of Standards and Technology, the General Services*  
2 *Administration, and the Department of Defense.*

3       “(3) *The Administrator shall carry out paragraph (1)*  
4 *not later than the date that is 5 years after the date of*  
5 *the enactment of the Federal Acquisition Improvement Act*  
6 *of 1994.*

7       “(b) *FUNCTIONS OF FACNET.—The FACNET archi-*  
8 *itecture shall provide for the following functions:*

9               “(1) *GOVERNMENT FUNCTIONS.—Allow executive*  
10 *agencies to do the following electronically:*

11                       “(A) *Provide widespread public notice of so-*  
12 *licitations for contract opportunities issued by*  
13 *an executive agency and of orders to be made by*  
14 *the agency.*

15                       “(B) *Allow responses to solicitations and re-*  
16 *quests for information to be submitted to the pro-*  
17 *curring activity through such system.*

18                       “(C) *Allow public notice of contract awards*  
19 *to be provided through such system.*

20                       “(D) *In cases in which it is practicable,*  
21 *allow questions regarding solicitations to be an-*  
22 *swered through such system.*

23                       “(E) *Allow orders to be made through such*  
24 *system.*

1           “(F) *In cases in which it is practicable,*  
2           *make payments to contractors by bank card, elec-*  
3           *tronic funds transfer, or other automated meth-*  
4           *ods.*

5           “(G) *Archive data relating to each procure-*  
6           *ment action made using such system.*

7           “(2) *USER FUNCTIONS.—Allow private users to*  
8           *do the following electronically:*

9           “(A) *Access notice of solicitations for con-*  
10           *tract opportunities issued by an executive agency*  
11           *and of orders to be made by the executive agency.*

12           “(B) *Selectively access and review solicita-*  
13           *tions and orders issued by the executive agency.*

14           “(C) *Respond to solicitations and notices of*  
15           *orders issued by the executive agency.*

16           “(D) *Receive orders from the executive agen-*  
17           *cy.*

18           “(E) *Access information on contract awards*  
19           *made by the executive agency.*

20           “(F) *In cases in which it is practicable, re-*  
21           *ceive payment by bank card, electronic funds*  
22           *transfer, or other automated means.*

23           “(3) *GENERAL FUNCTIONS.—*

1           “(A) Allow the electronic exchange of pro-  
2           curement information between the private sector  
3           and the Federal Government.

4           “(B) Employ nationally and internation-  
5           ally recognized data formats that serve to broad-  
6           en and ease the electronic interchange of data.

7           “(C) Allow convenient and universal user  
8           access through a single point of entry.

9           “(c) ARCHITECTURE DEFINED.—For purposes of this  
10          section, the term ‘architecture’ means an evolving descrip-  
11          tion of all functions to be performed to achieve the mission  
12          of streamlining procurement through electronic commerce,  
13          the system elements and interfaces needed to perform the  
14          functions, and the designation of performance levels of those  
15          system elements.

16          “(d) ANNUAL REPORT TO CONGRESS.—The Adminis-  
17          trator shall evaluate progress by executive agencies in im-  
18          plementing the FACNET under this section. The Adminis-  
19          trator shall submit to the Congress, on the date that is one  
20          year after the date of the enactment of the Federal Acquisi-  
21          tion Improvement Act of 1994 and on that date in each  
22          of the 5 years thereafter, a report on the overall progress  
23          by the executive branch and by each executive agency in  
24          implementing this section.”.

1       (b) *TECHNICAL AMENDMENTS.*—Section 18 of the Of-  
2       *fice of Federal Procurement Policy Act (41 U.S.C. 416) is*  
3       *amended—*

4             (1) *in subsection (a)(1)(A), by striking out “no-*  
5       *tice” in the matter following clause (ii) and inserting*  
6       *in lieu thereof “notice of solicitation”; and*

7             (2) *in subsection (d), by striking out “a notice*  
8       *under subsection (e)” in the first sentence and insert-*  
9       *ing in lieu thereof “a notice of solicitation under sub-*  
10       *section (a)”.*

11       ***SEC. 4003. IMPLEMENTATION IN ARMED SERVICES.***

12       (a) *ESTABLISHMENT IN TITLE 10.*—Chapter 137 of  
13       *title 10, United States Code, is amended by inserting after*  
14       *section 2302 the following new sections:*

15       ***“§ 2302a. Simplified acquisition threshold***

16       *“(a) SIMPLIFIED ACQUISITION THRESHOLD.—For*  
17       *purposes of acquisitions by agencies named in section 2303*  
18       *of this title, the simplified acquisition threshold is as speci-*  
19       *fied in section 4A of the Office of Federal Procurement Pol-*  
20       *icy Act.*

21       ***“§ 2302b. Implementation of FACNET capability***

22       *“(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1)*  
23       *The head of each agency named in section 2303 of this title*  
24       *shall implement the Federal acquisition computer network*  
25       *(‘FACNET’) capability required by section 30 of the Office*

1 *of Federal Procurement Policy Act. In the case of the De-*  
2 *partment of Defense, the implementation shall be by the*  
3 *Secretary of Defense for the Department of Defense as a*  
4 *whole. For purposes of this section, the term 'head of an*  
5 *agency' does not include the Secretaries of the military de-*  
6 *partments.*

7       “(2) *In implementing the FACNET capability pursu-*  
8 *ant to paragraph (1), the head of an agency shall consult*  
9 *with the Administrator for Federal Procurement Policy,*

10       “(b) *DESIGNATION OF AGENCY OFFICIAL.—(1) The*  
11 *Secretary of Defense shall designate the Under Secretary*  
12 *of Defense for Acquisition and Technology to have respon-*  
13 *sibility for implementation of FACNET capability through-*  
14 *out the Department of Defense.*

15       “(2) *The head of each agency named in paragraph (5)*  
16 *or (6) of section 2303 of this title shall designate a program*  
17 *manager to have responsibility for implementation of*  
18 *FACNET capability for that agency and otherwise to im-*  
19 *plement this section. Such program manager shall report*  
20 *directly to the senior procurement executive designated for*  
21 *the agency under section 16(3) of the Office of Federal Pro-*  
22 *curement Policy Act (41 U.S.C. 414(3)).*

23       “(c) *CERTIFICATION OF FACNET CAPABILITY.—(1)*  
24 *When the senior procurement executive of an agency or, in*  
25 *the case of the Department of Defense, the Under Secretary*

1 *of Defense for Acquisition and Technology, determines that*  
2 *a procuring activity of the agency has implemented an in-*  
3 *terim FACNET capability (as defined in subsection (e)),*  
4 *the executive or the Under Secretary shall certify to the Ad-*  
5 *ministrator for Federal Procurement Policy that such activ-*  
6 *ity has implemented an interim FACNET capability.*

7       “(2) *When the head of an agency, with the concurrence*  
8 *of the Administrator for Federal Procurement Policy, deter-*  
9 *mines that the agency has implemented a full FACNET ca-*  
10 *pability (as defined in subsection (f)), the head of the agen-*  
11 *cy shall certify to Congress that the agency has implemented*  
12 *a full FACNET capability.*

13       “(3) *The head of each agency shall provide for imple-*  
14 *mentation of both interim FACNET capability and full*  
15 *FACNET capability, with priority on providing convenient*  
16 *and universal user access as required by section 30(b)(3)(C)*  
17 *of the Office of Federal Procurement Policy Act, in that*  
18 *agency as soon as practicable after the date of the enactment*  
19 *of the Federal Acquisition Improvement Act of 1994.*

20       “(d) *HIGHER SIMPLIFIED ACQUISITION THRESHOLD*  
21 *WHEN FACNET CAPABILITY CERTIFIED.—A certification*  
22 *to the Administrator for Federal Procurement Policy or*  
23 *Congress under subsection (c) shall be considered to be a*  
24 *certification for purposes of the higher simplified acquisi-*  
25 *tion threshold under section 4A(b) of the Office of Federal*

1 *Procurement Policy Act, except that a certification under*  
2 *paragraph (1) of subsection (c) shall not constitute such a*  
3 *certification in the case of solicitations issued after the end*  
4 *of the five-year period beginning on the date of the enact-*  
5 *ment of the Federal Acquisition Improvement Act of 1994.*

6       “(e) *IMPLEMENTATION OF INTERIM FACNET CAPA-*  
7 *BILITY.—A procuring activity shall be considered to have*  
8 *implemented an interim FACNET capability if—*

9               “(1) *with respect to each procurement expected to*  
10 *be in an amount greater than the micro-purchase*  
11 *threshold and less than the simplified acquisition*  
12 *threshold, the procuring activity has implemented the*  
13 *FACNET functions described in paragraphs (1)(A)*  
14 *and (2)(A) of section 30(b) of the Office of Federal*  
15 *Procurement Policy Act; and*

16               “(2) *with respect to each procurement expected to*  
17 *be in an amount greater than the micro-purchase*  
18 *threshold and less than the simplified acquisition*  
19 *threshold, the procuring activity issues notices of so-*  
20 *licitations through a system with those functions for*  
21 *all contracting opportunities other than in cases cov-*  
22 *ered by section 18(c) of the Office of Federal Procure-*  
23 *ment Policy Act (41 U.S.C. 416(c)).*

24       “(f) *IMPLEMENTATION OF FULL FACNET CAPABIL-*  
25 *ITY.—(1) An agency shall be considered to have imple-*

1 *mented a full FACNET capability if (except in the case*  
2 *of procuring activities (or portions thereof) of the agency*  
3 *for which the head of the agency determines that implemen-*  
4 *tation is not cost effective or practicable) the agency has*  
5 *implemented all of the FACNET functions described in sec-*  
6 *tion 30(b) of the Office of Federal Procurement Policy Act.*

7       “(2) For purposes of paragraph (1), an agency may  
8 not be considered to have implemented a full FACNET ca-  
9 pability if—

10           “(A) the head of the agency has determined that  
11 implementation of FACNET capability is not cost ef-  
12 fective or practicable in the case of certain procuring  
13 activities (or portions thereof) of the agency; and

14           “(B) the percentage of the procurement actions  
15 in amounts greater than the micro-purchase threshold  
16 executed by the procuring activities (or portions  
17 thereof) referred to in subparagraph (A) for the pre-  
18 ceding fiscal year is greater than 25 percent of the  
19 total number of procurement actions in amounts  
20 greater than the micro-purchase threshold executed by  
21 the agency for that year.

22       “(g) *PROCURING ACTIVITIES ORIGINALLY EXCLUDED*  
23 *IN CERTIFICATION.*—(1) If the head of an agency, in cer-  
24 tifying under subsection (c) that the agency has imple-  
25 mented a full FACNET capability, determines that such

1 *implementation is not cost effective or practicable in the*  
2 *case of any procuring activity (or portion thereof) of that*  
3 *agency, then that certification shall not apply under section*  
4 *4A(b) of the Office of Federal Procurement Policy Act to*  
5 *any procurement action by that procuring activity (or por-*  
6 *tion thereof).*

7       “(2) *If the head of an agency determines that an in-*  
8 *terim or a full FACNET capability has subsequently been*  
9 *implemented for that procuring activity (or portion there-*  
10 *of), the head of the agency shall make a certification to the*  
11 *Administrator for Federal Procurement Policy in the same*  
12 *manner as a certification under paragraph (1) or (2) of*  
13 *subsection (c), as applicable, and such certification shall*  
14 *have the same effect with respect to that procuring activity*  
15 *(or portion thereof) as if made under such paragraph of*  
16 *subsection (c).”*

17       **(b) CLERICAL AMENDMENT.**—*The table of sections at*  
18 *the beginning of chapter 137 of such title is amended by*  
19 *inserting after the item relating to section 2302 the follow-*  
20 *ing new items:*

*“2302a. Simplified acquisition threshold.*

*“2302b. Implementation of FACNET capability.”*

21 **SEC. 4004. IMPLEMENTATION IN CIVILIAN AGENCIES.**

22       *Title III of the Federal Property and Administrative*  
23 *Services Act of 1949 is amended by inserting after section*  
24 *302 the following new sections:*

1 **“SEC. 302A. SIMPLIFIED ACQUISITION THRESHOLD.**

2       “(a) *SIMPLIFIED ACQUISITION THRESHOLD.*—For  
3 *purposes of acquisitions by executive agencies, the sim-*  
4 *plified acquisition threshold is as specified in section 4A*  
5 *of the Office of Federal Procurement Policy Act.*

6 **“SEC. 302B. IMPLEMENTATION OF FACNET CAPABILITY.**

7       “(a) *IMPLEMENTATION OF FACNET CAPABILITY.*—(1)  
8 *The head of each executive agency shall implement the Fed-*  
9 *eral acquisition computer network (‘FACNET’) capability*  
10 *required by section 30 of the Office of Federal Procurement*  
11 *Policy Act.*

12       “(2) *In implementing the FACNET capability pursu-*  
13 *ant to paragraph (1), the head of an executive agency shall*  
14 *consult with the Administrator for Federal Procurement*  
15 *Policy.*

16       “(b) *DESIGNATION OF AGENCY OFFICIAL.*—The head  
17 *of each executive agency shall designate a program manager*  
18 *to have responsibility for implementation of FACNET ca-*  
19 *pability for that agency and otherwise to implement this*  
20 *section. Such program manager shall report directly to the*  
21 *senior procurement executive designated for the agency*  
22 *under section 16(3) of the Office of Federal Procurement*  
23 *Policy Act (41 U.S.C. 414(3)).*

24       “(c) *CERTIFICATION OF FACNET CAPABILITY.*—(1)  
25 *When the senior procurement executive of an executive agen-*  
26 *cy determines that a procuring activity of the agency has*

1 *implemented an interim FACNET capability (as defined*  
2 *in subsection (e)), the executive shall certify to the Adminis-*  
3 *trator for Federal Procurement Policy that such activity*  
4 *has implemented an interim FACNET capability.*

5       “(2) *When the head of an executive agency, with the*  
6 *concurrence of the Administrator for Federal Procurement*  
7 *Policy, determines that the executive agency has imple-*  
8 *mented a full FACNET capability (as defined in subsection*  
9 *(f)), the head of the executive agency shall certify to Con-*  
10 *gress that the agency has implemented a full FACNET ca-*  
11 *pability.*

12       “(3) *The head of each executive agency shall provide*  
13 *for implementation of both interim FACNET capability*  
14 *and full FACNET capability, with priority on providing*  
15 *convenient and universal user access as required by section*  
16 *30(b)(3)(C) of the Office of Federal Procurement Policy Act,*  
17 *in that executive agency as soon as practicable after the*  
18 *date of the enactment of the Federal Acquisition Improve-*  
19 *ment Act of 1994.*

20       “(d) *HIGHER SIMPLIFIED ACQUISITION THRESHOLD*  
21 *WHEN FACNET CAPABILITY CERTIFIED.*—*A certification*  
22 *to the Administrator for Federal Procurement Policy or*  
23 *Congress under subsection (c) shall be considered to be a*  
24 *certification for purposes of the higher simplified acquisi-*  
25 *tion threshold under section 4A(b) of the Office of Federal*

1 *Procurement Policy Act, except that a certification under*  
2 *paragraph (1) of subsection (c) shall not constitute such a*  
3 *certification in the case of solicitations issued after the end*  
4 *of the five-year period beginning on the date of the enact-*  
5 *ment of the Federal Acquisition Improvement Act of 1994.*

6       “(e) *IMPLEMENTATION OF INTERIM FACNET CAPA-*  
7 *BILITY.—A procuring activity shall be considered to have*  
8 *implemented an interim FACNET capability if—*

9               “(1) *with respect to each procurement expected to*  
10 *be in an amount greater than the micro-purchase*  
11 *threshold and less than the simplified acquisition*  
12 *threshold, the procuring activity has implemented the*  
13 *FACNET functions described in paragraphs (1)(A)*  
14 *and (2)(A) of section 30(b) of the Office of Federal*  
15 *Procurement Policy Act; and*

16               “(2) *with respect to each procurement expected to*  
17 *be in an amount greater than the micro-purchase*  
18 *threshold and less than the simplified acquisition*  
19 *threshold, the procuring activity issues notices of so-*  
20 *licitations through a system with those functions for*  
21 *all contracting opportunities other than in cases cov-*  
22 *ered by section 18(c) of the Office of Federal Procure-*  
23 *ment Policy Act (41 U.S.C. 416(c)).*

24       “(f) *IMPLEMENTATION OF FULL FACNET CAPABIL-*  
25 *ITY.—(1) An executive agency shall be considered to have*

1 *implemented a full FACNET capability if (except in the*  
2 *case of procuring activities (or portions thereof) of the exec-*  
3 *utive agency for which the head of the agency determines*  
4 *that implementation is not cost effective or practicable) the*  
5 *executive agency has implemented all of the FACNET func-*  
6 *tions described in section 30(b) of the Office of Federal Pro-*  
7 *curement Policy Act.*

8       “(2) For purposes of paragraph (1), an executive agen-  
9 cy may not be considered to have implemented a full  
10 FACNET capability if—

11           “(A) the head of the executive agency has deter-  
12 mined that implementation of FACNET capability is  
13 not cost effective or practicable in the case of certain  
14 procuring activities (or portions thereof) of the execu-  
15 tive agency; and

16           “(B) the percentage of the procurement actions  
17 in amounts greater than the micro-purchase threshold  
18 executed by the procuring activities (or portions  
19 thereof) referred to in subparagraph (A) for the pre-  
20 ceding fiscal year is greater than 25 percent of the  
21 total number of procurement actions in amounts  
22 greater than the micro-purchase threshold executed by  
23 the executive agency for that year.

24       “(g) *PROCURING ACTIVITIES ORIGINALLY EXCLUDED*  
25 *IN CERTIFICATION.*—(1) If the head of an executive agency,



1 **“SEC. 4B. PROCEDURES APPLICABLE TO PURCHASES**  
2 **BELOW MICRO-PURCHASE THRESHOLD.**

3 “(a) *REQUIREMENTS.—(1) The head of each executive*  
4 *agency shall ensure that procuring activities of that agency,*  
5 *in awarding a contract with a price exceeding the micro-*  
6 *purchase threshold, comply with the requirements of section*  
7 *8(a) of the Small Business Act (15 U.S.C. 637(a)) and sec-*  
8 *tion 2323 of title 10, United States Code, or section 315*  
9 *of the Federal Property and Administrative Services Act*  
10 *of 1949, as applicable to that agency.*

11 “(2) *The authority under part 13.106(a)(1) of the Fed-*  
12 *eral Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in*  
13 *effect on November 18, 1993, to make purchases without se-*  
14 *curing competitive quotations does not apply to any pur-*  
15 *chases with a price exceeding the micro-purchase threshold.*

16 “(b) *EXCLUSION FOR MICRO-PURCHASES.—A pur-*  
17 *chase by an executive agency with an anticipated value of*  
18 *the micro-purchase threshold or less is not subject to the*  
19 *Act of March 3, 1933, commonly referred to as the ‘Buy*  
20 *American Act’ (41 U.S.C. 10a–10c).*

21 “(c) *APPLICABILITY OF CERTAIN PROVISIONS.—For*  
22 *purposes of section 27, only subsections (a) and (b) shall*  
23 *apply with respect to purchases below the micro-purchase*  
24 *threshold. In applying such subsection (a), a contractor that*  
25 *enters into a contract under the micro-purchase threshold*  
26 *shall be considered to be a competing contractor. In apply-*

1 *ing such subsection (b), a civil officer or employee, and any*  
2 *member of the Armed Forces, who has authority to enter*  
3 *into contracts but whose contracting authority is limited*  
4 *to the amount of the micro-purchase threshold or less shall*  
5 *be considered to be a procurement official.*

6 *“(d) IMPLEMENTATION THROUGH FAR.—This section*  
7 *shall be implemented through the Federal Acquisition Regu-*  
8 *lation.*

9 *“(e) MICRO-PURCHASE THRESHOLD DEFINED.—For*  
10 *purposes of this section, the micro-purchase threshold is the*  
11 *amount of \$2,500, adjusted on October 1 of each year divis-*  
12 *ible by 5 to the equivalent amount in constant fiscal year*  
13 *1993 dollars (rounded to the nearest \$100).”.*

14 **SEC. 4012. PROCUREMENT NOTICE.**

15 *(a) CONTINUATION OF EXISTING NOTICE THRESH-*  
16 *OLDS.—Subsection (a) of section 18 of the Office of Federal*  
17 *Procurement Policy Act (41 U.S.C. 416) is amended as fol-*  
18 *lows:*

19 *(1) Paragraph (1) is amended—*

20 *(A) by striking out “the small purchase*  
21 *threshold” each place it appears and inserting in*  
22 *lieu thereof “the simplified acquisition thresh-*  
23 *old”;*

1           (B) by striking out “(c)—” in the matter  
2 preceding subparagraph (A) and inserting in  
3 lieu thereof “(c):”;

4           (C) by striking out “an executive” at the be-  
5 ginning of subparagraphs (A) and (C) and in-  
6 serting in lieu thereof “An executive”;

7           (D) by striking out the semicolon at the end  
8 of subparagraph (A) and inserting in lieu thereof  
9 a period; and

10           (E) by amending subparagraph (B) to read  
11 as follows:

12           “(B) An executive agency intending to solicit  
13 bids or proposals for a contract for property or serv-  
14 ices for a price expected to exceed \$10,000 but not to  
15 exceed the simplified acquisition threshold shall post  
16 a notice of solicitation described in subsection (b).  
17 The notice shall be posted at the contracting office is-  
18 suing the solicitation or shall be made available  
19 through an electronic system with a FACNET capa-  
20 bility that at least meets the requirements of para-  
21 graphs (1)(A) and (2)(A) of section 30(b). The notice  
22 shall be posted for a period of not less than 10 days,  
23 except that in the case of a posting made through an  
24 electronic system with such a FACNET capability,

1        *the posting may be for a period of less than 10 days*  
2        *as prescribed in the Federal Acquisition Regulation.”.*

3            (2) Paragraph (3)(B) is amended by inserting  
4        *after “(B)” the following: “in the case of a contract*  
5        *or order for an amount expected to exceed the sim-*  
6        *plified acquisition threshold.”.*

7            (b) *OPPORTUNITY FOR ALL RESPONSIBLE POTENTIAL*  
8        *OFFERORS.—Such subsection is further amended by adding*  
9        *at the end the following:*

10            “(4) *An executive agency intending to solicit offers for*  
11        *a contract for which a notice of solicitation is required to*  
12        *be posted under paragraph (1)(B) shall ensure that all po-*  
13        *tential offerors are permitted to respond to the solicitation*  
14        *for the contract within the period of time specified in the*  
15        *solicitation for the submission of offers.”.*

16            (c) *ESTABLISHMENT OF DEADLINE FOR SUBMISSION*  
17        *OF OFFERS.—Such subsection is further amended by add-*  
18        *ing after paragraph (4), as added by subsection (b), the fol-*  
19        *lowing new paragraph:*

20            “(5) *An executive agency shall establish a deadline for*  
21        *the submission of all bids or proposals in response to a no-*  
22        *tice of solicitation with respect to which no such deadline*  
23        *is provided by statute.”.*

24            (d) *EXCEPTIONS.—Subsection (c) of such section is*  
25        *amended by adding at the end the following new paragraph:*



1       (b) *DATA TO BE COLLECTED.*—Data collected under  
2 subsection (a) shall include data regarding whether the es-  
3 tablishment of the simplified acquisition threshold has im-  
4 proved the acquisition process in terms of reduced paper-  
5 work, financial or other savings to the Federal Government,  
6 and any increase in the number of contractors participat-  
7 ing in the contracting process.

8       (c) *PERIOD.*—Data shall be collected for purposes of  
9 subsection (a) during the period beginning with the first  
10 full fiscal year quarter after the effective date of the amend-  
11 ments made by section 3001 and ending on September 30,  
12 1997.

13       (d) *REPORT.*—By March 1, 1998, the Comptroller  
14 General shall submit to Congress a report on the effects of  
15 the establishment of the simplified acquisition threshold by  
16 the amendments made by section 3001.

1 **PART III—INAPPLICABILITY OF LAWS TO ACQUI-**  
2 **SITIONS NOT IN EXCESS OF SIMPLIFIED AC-**  
3 **QUISITION THRESHOLD**

4 **Subpart A—Generally**

5 **SEC. 4021. INAPPLICABILITY OF FUTURE ENACTED PRO-**  
6 **CUREMENT LAWS TO CONTRACTS NOT EX-**  
7 **CEEDING THE SIMPLIFIED ACQUISITION**  
8 **THRESHOLD.**

9 (a) *ARMED SERVICES.*—Section 2302a of title 10,  
10 *United States Code*, as added by section 4003(a), is amend-  
11 *ed by adding at the end the following new subsection:*

12 “(b) *CONSTRUCTION WITH FUTURE ENACTMENTS.*—A  
13 *provision of law enacted after the date of the enactment of*  
14 *the Federal Acquisition Improvement Act of 1994 shall not*  
15 *be construed as applicable to purchases of property or serv-*  
16 *ices by an agency named in section 2303 of this title for*  
17 *an amount not in excess of the simplified acquisition*  
18 *threshold unless that provision of law specifically refers to*  
19 *this section and specifically states that such provision of*  
20 *law modifies or supersedes this section.”*

21 (b) *CIVILIAN AGENCIES.*—Section 302A of the Federal  
22 *Property and Administrative Services Act of 1949*, as added  
23 *by section 4004(a)*, is amended by adding at the end the  
24 *following new subsection:*

25 “(b) *CONSTRUCTION WITH FUTURE ENACTMENTS.*—A  
26 *provision of law enacted after the date of the enactment of*

1 *the Federal Acquisition Improvement Act of 1994 shall not*  
2 *be construed as applicable to purchases of property or serv-*  
3 *ices by an executive agency for an amount not in excess*  
4 *of the simplified acquisition threshold unless that provision*  
5 *of law specifically refers to this section and specifically*  
6 *states that such provision of law modifies or supersedes this*  
7 *section.”.*

8 ***Subpart B—Armed Services Acquisitions***

9 ***SEC. 4031. INAPPLICABILITY OF CERTAIN PROVISIONS OF***  
10 ***LAW.***

11 *Section 2302a of title 10, United States Code, as*  
12 *amended by section 4021, is further amended by adding at*  
13 *the end the following new subsection:*

14 *“(c) INAPPLICABILITY OF CERTAIN PROVISIONS OF*  
15 *LAW.—The following provisions of law (and regulations*  
16 *prescribed under such provisions) shall not apply to any*  
17 *contract in an amount not greater than the simplified ac-*  
18 *quisition threshold:*

19 *“(1) Section 2306(b) of this title (relating to pro-*  
20 *hibition on contingent fees).*

21 *“(2) Section 2313 of this title (relating to exam-*  
22 *ination of books and records of contractor).*

23 *“(3) Section 2384(b) of this title (relating to re-*  
24 *quirement to identify suppliers and sources of sup-*  
25 *plies).*

1           “(4) Section 2393(d) of this title (relating to  
2 prohibition against doing business with certain  
3 offerors of contractors).

4           “(5) Section 2402 of this title (relating to prohi-  
5 bition on limitation of subcontractor direct sales).

6           “(6) Section 2408(a) of this title (relating to  
7 prohibition on persons convicted of defense-contract  
8 related felonies).

9           “(7) Section 2410b of this title (relating to con-  
10 tractor inventory accounting system standards).

11           “(8) Section 2534 of this title (relating to mis-  
12 cellaneous limitations on procurement).

13           “(9) Section 27(e) of the Office of Federal Pro-  
14 curement Policy Act (41 U.S.C. 423(e)).

15           “(10) The Drug-Free Workplace Act of 1988  
16 (subtitle D of title V of Public Law 100–690; 41  
17 U.S.C. 701 et seq.).”.

18 **SEC. 4032. CONFORMING AMENDMENTS RELATING TO INAP-**  
19 **PLICABILITY OF CERTAIN PROVISIONS OF**  
20 **LAW.**

21           (a) *INAPPLICABILITY OF REQUIREMENT FOR CON-*  
22 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section  
23 *2306(b) of title 10, United States Code, is amended by add-*  
24 *ing at the end the following: “This subsection does not apply*

1 *to a contract that is for an amount not in excess of the*  
2 *simplified acquisition threshold.”.*

3       **(b) INAPPLICABILITY OF AUTHORITY TO EXAMINE**  
4 *BOOKS AND RECORDS OF CONTRACTORS.—Section 2313 of*  
5 *title 10, United States Code, as amended by section 2201,*  
6 *is further amended by adding at the end of subsection (e)*  
7 *the following:*

8               “(2) *A contract that is for an amount not in ex-*  
9               *cess of the simplified acquisition threshold.”.*

10       **(c) INAPPLICABILITY OF REQUIREMENT TO IDENTIFY**  
11 *SUPPLIERS AND SOURCES OF SUPPLIES.—Section 2384(b)*  
12 *of title 10, United States Code, is amended by adding at*  
13 *the end the following new paragraph:*

14               “(3) *The regulations prescribed pursuant to paragraph*  
15 *(1) do not apply to a contract for an amount that does*  
16 *not exceed the simplified acquisition threshold.”.*

17       **(d) INAPPLICABILITY OF PROHIBITION AGAINST DOING**  
18 *BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—*  
19 *Section 2393(d) of title 10, United States Code, is amended*  
20 *in the second sentence by striking out “above” and all that*  
21 *follows and inserting in lieu thereof “in excess of the sim-*  
22 *plified acquisition threshold.”.*

23       **(e) INAPPLICABILITY OF PROHIBITION ON LIMITING**  
24 *SUBCONTRACTOR DIRECT SALES TO THE UNITED*

1 *STATES.—Section 2402 of title 10, United States Code, is*  
2 *amended by adding at the end the following new subsection:*

3       “(c) *This section does not apply to a contract that is*  
4 *for an amount not in excess of the simplified acquisition*  
5 *threshold.*”.

6       (f) *INAPPLICABILITY OF PROHIBITION ON PERSONS*  
7 *CONVICTED OF DEFENSE-RELATED FELONIES.—Section*  
8 *2408(a) of title 10, United States Code, is amended by add-*  
9 *ing at the end the following new paragraph:*

10       “(4) *In this subsection, the term ‘defense contract’*  
11 *means a contract in an amount in excess of the simplified*  
12 *acquisition threshold.*”.

13       (g) *INAPPLICABILITY OF CONTRACTOR INVENTORY AC-*  
14 *COUNTING SYSTEM STANDARDS.—Section 2410b of title 10,*  
15 *United States Code, is amended—*

16           (1) *by inserting “(a)” before “The Secretary”;*  
17       *and*

18           (2) *by adding at the end the following:*

19       “(b) *The regulations prescribed pursuant to subsection*  
20 *(a) shall not apply to a contract that is for an amount*  
21 *not in excess of the simplified acquisition threshold.*”.

22       (h) *INAPPLICABILITY OF MISCELLANEOUS PROCURE-*  
23 *MENT LIMITATIONS.—Section 2534 of title 10, United*  
24 *States Code, is amended by adding at the end the following:*

1       “(g) *INAPPLICABILITY TO CONTRACTS UNDER SIM-*  
2 *PLIFIED ACQUISITION THRESHOLD.*—*This section does not*  
3 *apply to a contract for an amount that does not exceed the*  
4 *simplified acquisition threshold.*”.

5               ***Subpart C—Civilian Agency Acquisitions***

6       ***SEC. 4041. INAPPLICABILITY OF CERTAIN PROVISIONS OF***  
7               ***LAW.***

8       *Section 302A of the Federal Property and Administra-*  
9 *tive Services Act of 1949, as amended by section 4021(b),*  
10 *is further amended by adding at the end the following new*  
11 *subsection:*

12       “(c) *INAPPLICABILITY OF CERTAIN PROVISIONS OF*  
13 *LAW.*—*The following provisions of law (and regulations*  
14 *prescribed under such provisions) shall not apply to any*  
15 *contract entered into by an executive agency in an amount*  
16 *not greater than the simplified acquisition threshold:*

17               “(1) *Sections 303G, 304(a), and 304C of this*  
18 *Act.*

19               “(2) *Section 27(e) of the Office of Federal Pro-*  
20 *curement Policy Act (41 U.S.C. 423(e)).*

21               “(3) *The Drug-Free Workplace Act of 1988 (sub-*  
22 *title D of title V of Public Law 100–690; 41 U.S.C.*  
23 *701 et seq.).*”.

1 **SEC. 4042. CONFORMING AMENDMENTS RELATING TO INAP-**  
2 **PLICABILITY OF CERTAIN PROVISIONS OF**  
3 **LAW.**

4 (a) *INAPPLICABILITY OF PROHIBITION ON LIMITING*  
5 *SUBCONTRACTOR DIRECT SALES TO THE UNITED*  
6 *STATES.*—Section 303G of the Federal Property and Ad-  
7 ministrative Services Act of 1949 (41 U.S.C. 253g) is  
8 amended by adding at the end the following new subsection:  
9 “(c) This section does not apply to a contract for an  
10 amount that is not in excess of the simplified acquisition  
11 threshold.”.

12 (b) *INAPPLICABILITY OF REQUIREMENT FOR CON-*  
13 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section  
14 304(a) of the Federal Property and Administrative Services  
15 Act of 1949 (41 U.S.C. 254(a)) is amended by adding at  
16 the end the following: “The preceding sentence does not  
17 apply to a contract for an amount that is not in excess  
18 of the simplified acquisition threshold.”.

19 (c) *INAPPLICABILITY OF AUTHORITY TO EXAMINE*  
20 *BOOKS AND RECORDS OF CONTRACTORS.*—Section 304C of  
21 the Federal Property and Administrative Services Act of  
22 1949, as added by section 2251(a), is amended by adding  
23 at the end of subsection (e) the following:

24 “(2) A contract that is for an amount not in ex-  
25 cess of the simplified acquisition threshold.”.

1                   **Subpart D—Acquisitions Generally**

2   **SEC. 4051. CONFORMANCE OF CERTAIN PROCUREMENT IN-**  
3                   **TEGRITY REQUIREMENTS.**

4            *Subsection (e)(7)(A) of section 27 of the Office of Fed-*  
5   *eral Procurement Policy Act (41 U.S.C. 423) is amended*  
6   *by inserting after “\$100,000” the following: “or the sim-*  
7   *plified acquisition threshold, whichever is greater”.*

8   **SEC. 4052. INAPPLICABILITY OF THE DRUG-FREE WORK-**  
9                   **PLACE ACT OF 1988.**

10           *Section 5152(a)(1) of the Drug-Free Workplace Act of*  
11   *1988 (subtitle D of title V of the Anti-Drug Abuse Act of*  
12   *1988; Public Law 100–690; 41 U.S.C. 701(a)(1)) is amend-*  
13   *ed by striking out “of \$25,000 or more from any Federal*  
14   *agency” and inserting in lieu thereof “in excess of the sim-*  
15   *plified acquisition threshold (as defined in section 4A of*  
16   *such Act) by any Federal agency”.*

17                   **PART IV—CONFORMING AMENDMENTS**

18   **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

19            *(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section*  
20   *2304(g) of title 10, United States Code, is amended—*

21                    *(1) in paragraph (1), by striking out “small*  
22                    *purchases of property and services” and inserting in*  
23                    *lieu thereof “purchases of property and services for*  
24                    *amounts not in excess of the simplified acquisition*  
25                    *threshold”;*

26                    *(2) by striking out paragraph (2);*

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

3           (4) in paragraph (2), as so redesignated—

4                 (A) by striking out “small purchase thresh-  
5                 old” and inserting in lieu thereof “simplified ac-  
6                 quisition threshold”; and

7                 (B) by striking out “small purchase proce-  
8                 dures” and inserting in lieu thereof “simplified  
9                 procedures”; and

10           (5) in paragraph (3), as so redesignated, by  
11           striking out “small purchase procedures” and insert-  
12           ing in lieu thereof “simplified procedures”.

13           (b) *SOLICITATION CONTENT REQUIREMENT.*—Section  
14           2305(a)(2) of such title is amended by striking out “small  
15           purchases)” in the matter preceding subparagraph (A) and  
16           inserting in lieu thereof “a purchase for an amount not in  
17           excess of the simplified acquisition threshold)”.

18           (c) *COST TYPE CONTRACTS.*—Section 2306(e)(2)(A) of  
19           such title is amended by striking out “small purchase  
20           threshold” and inserting in lieu thereof “simplified acquisi-  
21           tion threshold”.

22           (d) *CROSS REFERENCE AMENDMENT.*—Section 9005  
23           of Public Law 102–396 (10 U.S.C. 2441 note) is amended  
24           in the first sentence by striking out “small purchases cov-  
25           ered by section 2304(g)” and inserting in lieu thereof “pur-

1 *chases for amounts not in excess of the simplified acquisi-*  
2 *tion threshold covered by section 2304(g)''.*

3 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

4 (a) *SIMPLIFIED ACQUISITION PROCEDURES.*—Section  
5 *303(g) of the Federal Property and Administrative Services*  
6 *Act of 1949 (41 U.S.C. 253(g)) is amended—*

7 (1) *in paragraph (1)—*

8 (A) *by striking out “small purchases of*  
9 *property and services” and inserting in lieu*  
10 *thereof “purchases of property and services for*  
11 *amounts not in excess of the simplified acquisi-*  
12 *tion threshold”, and*

13 (B) *by striking out “regulations modified,*  
14 *in accordance with section 2752 of the Competi-*  
15 *tion in Contracting Act of 1984,” and inserting*  
16 *in lieu thereof “Federal Acquisition Regulation”;*

17 (2) *by striking out paragraph (2);*

18 (3) *by redesignating paragraphs (3) and (4) as*  
19 *paragraphs (2) and (3), respectively;*

20 (4) *in paragraph (2), as so redesignated—*

21 (A) *by striking out “small purchase thresh-*  
22 *old” and inserting in lieu thereof “simplified ac-*  
23 *quisition threshold”;* and



1           **PART V—REVISION OF REGULATIONS**

2   **SEC. 4081. REVISION REQUIRED.**

3           (a) *FEDERAL ACQUISITION REGULATION.*—(1) *Not*  
4 *later than one year after the date of the enactment of this*  
5 *Act, the Federal Acquisition Regulatory Council established*  
6 *by section 25(a) of the Office of Federal Procurement Policy*  
7 *Act (41 U.S.C. 421(a)) shall—*

8                   (A) *review the Federal Acquisition Regulation to*  
9 *identify regulations that are applicable to acquisi-*  
10 *tions in excess of a specified amount that is less than*  
11 *\$100,000 (other than such an amount that is specified*  
12 *by law); and*

13                   (B) *amend the regulations so identified to pro-*  
14 *vide that such regulations do not apply to acquisi-*  
15 *tions that are not in excess of the simplified acquisi-*  
16 *tion threshold.*

17           (2) *Paragraph (1)(B) does not apply in the case of*  
18 *a regulation for which such an amendment would not be*  
19 *in the national interest, as determined by the Council.*

20           (b) *SUPPLEMENTAL REGULATIONS.*—*Not later than 90*  
21 *days after the date on which the review required by sub-*  
22 *section (a)(1)(A) is completed, the head of each executive*  
23 *agency that has issued regulations, policies, or procedures*  
24 *referred to in section 25(c)(2) of the Office of Federal Pro-*  
25 *curement Policy Act (41 U.S.C. 421(c)(2)) shall—*

1           (1) *identify any such regulation, policy, or pro-*  
2           *cedure that is applicable to acquisitions in excess of*  
3           *a specified amount that is less than \$100,000; and*

4           (2) *pursuant to section 22 of such Act (41 U.S.C.*  
5           *418b), publish amendments to the regulations so iden-*  
6           *tified to provide that each such regulation, policy, or*  
7           *procedure does not apply to acquisitions that are not*  
8           *in excess of the simplified acquisition threshold.*

9           (c) *RELATIONSHIP TO OTHER AUTHORITY.—None of*  
10          *the amendments to regulations made pursuant to sub-*  
11          *sections (a) and (b) apply to or in any way diminish the*  
12          *authority of the civil rights enforcement programs enforced*  
13          *by the Department of Labor.*

14          (d) *DEFINITIONS.—In this section:*

15               (1) *The term “simplified acquisition threshold”*  
16               *has the meaning given such term in section 4A of the*  
17               *Office of Federal Procurement Policy Act, as added by*  
18               *section 4001.*

19               (2) *The term “executive agency” has the mean-*  
20               *ing given such term in section 3(a) of the Federal*  
21               *Property and Administrative Services Act of 1949 (41*  
22               *U.S.C. 472(b)).*

1           **Subtitle B—Socioeconomic and**  
2                           **Small Business Laws**

3   **SEC. 4101. SMALL BUSINESS PROVISIONS.**

4           *Section 6(d) of the Office of Federal Procurement Pol-*  
5   *icy Act (41 U.S.C. 405(d)) is amended—*

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

8                   (2) *by redesignating paragraph (8) as para-*  
9                   *graph (10); and*

10                  (3) *by inserting after paragraph (7) the follow-*  
11                  *ing new paragraphs:*

12                   “(8) *developing policies, in consultation with the*  
13                   *Administrator of the Small Business Administration,*  
14                   *that ensure that small businesses and small businesses*  
15                   *owned and controlled by socially and economically*  
16                   *disadvantaged persons are provided with the maxi-*  
17                   *imum practicable opportunities to participate in pro-*  
18                   *curements that are conducted for amounts below the*  
19                   *simplified acquisition threshold;*

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 **SEC. 4102. PAYMENT PROTECTIONS FOR SUBCONTRACTORS**  
2 **AND SUPPLIERS.**

3 (a) REGULATIONS.—

4 (1) IN GENERAL.—The Administrator for Fed-  
5 eral Procurement Policy shall prescribe in regulations  
6 the requirements described in paragraph (2).

7 (2) PROCEDURES RELATING TO COMPLIANCE  
8 WITH PAYMENT TERMS.—(A) Under procedures estab-  
9 lished in the regulations, upon the assertion by a sub-  
10 contractor or supplier of a contractor performing a  
11 Government contract that the subcontractor or sup-  
12 plier has not been paid by the prime contractor in ac-  
13 cordance with the payment terms of the subcontract,  
14 purchase order, or other agreement with the prime  
15 contractor, the contracting officer may determine the  
16 following:

17 (i) With respect to a construction contract,  
18 whether the contractor has made progress pay-  
19 ments to the subcontractor or supplier in compli-  
20 ance with chapter 39 of title 31, United States  
21 Code.

22 (ii) With respect to a contract other than a  
23 construction contract, whether the contractor has  
24 made progress or other payments to the sub-  
25 contractor or supplier in compliance with the

1           *terms of the subcontract, purchase order, or other*  
2           *agreement with the prime contractor.*

3           *(iii) With respect to either a construction*  
4           *contract or a contract other than a construction*  
5           *contract, whether the contractor has made final*  
6           *payment to the subcontractor or supplier in com-*  
7           *pliance with the terms of the subcontract, pur-*  
8           *chase order, or other agreement with the prime*  
9           *contractor.*

10           *(iv) With respect to either a construction*  
11           *contract or a contract other than a construction*  
12           *contract, whether any certification of payment of*  
13           *the subcontractor or supplier accompanying the*  
14           *contractor's payment request to the Government*  
15           *is accurate.*

16           *(B) If the contracting officer determines that the*  
17           *prime contractor is not in compliance with any mat-*  
18           *ter referred to in clause (i), (ii), or (iii) of subpara-*  
19           *graph (A), the contracting officer may, under proce-*  
20           *dures established in the regulations—*

21                   *(i) encourage the prime contractor to make*  
22                   *timely payment to the subcontractor or supplier;*  
23                   *or*

1           (ii) reduce or suspend progress payments  
2           with respect to amounts due to the prime con-  
3           tractor.

4           (C) If the contracting officer determines that a  
5           certification referred to in clause (iv) of subparagraph  
6           (A) is inaccurate in any material respect, the con-  
7           tracting officer shall, under procedures established in  
8           the regulations, initiate appropriate administrative  
9           or other remedial action.

10          (D) This paragraph shall apply with respect to  
11          any Government contract, other than a Department of  
12          Defense contract, that is in effect on the date of pro-  
13          mulgation of the regulations under this subsection or  
14          that is awarded after such date.

15          (b) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—The  
16          regulations prescribed under this section shall not apply to  
17          the following contracts:

18               (1) A contract that is for an amount not in ex-  
19               cess of the simplified acquisition threshold (within the  
20               meaning of section 4A of the Office of Federal Pro-  
21               curement Policy Act).

22               (2) A contract for the acquisition of commercial  
23               items (as that term is defined in section 4(12) of the  
24               Office of Federal Procurement Policy Act).

1           (c) *AMENDMENTS TO ARMED SERVICES PROVISION.*—  
2 *Section 806 of the National Defense Authorization Act for*  
3 *Fiscal Years 1992 and 1993 (Public Law 102–190; 10*  
4 *U.S.C. 2301 note) is amended by striking out subsection*  
5 *(c) and inserting in lieu thereof the following:*

6           “(c) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—*Reg-*  
7 *ulations prescribed under this section shall not apply to the*  
8 *following contracts:*

9                   “(1) *A contract that is for an amount not in ex-*  
10 *cess of the simplified acquisition threshold (within the*  
11 *meaning of section 4A of the Office of Federal Pro-*  
12 *curement Policy Act).*

13                   “(2) *A contract for the acquisition of commercial*  
14 *items (as that term is defined in section 2281 of title*  
15 *10, United States Code).”.*

16 ***SEC. 4103. EXTENSION OF TEST PROGRAM FOR NEGOTIA-***  
17 ***TION OF COMPREHENSIVE SMALL BUSINESS***  
18 ***SUBCONTRACTING PLANS.***

19           *Section 834(e) of the National Defense Authorization*  
20 *Act for Fiscal Years 1990 and 1991 (Public Law 101–189;*  
21 *15 U.S.C. 637 note) is amended by striking out “September*  
22 *30, 1994.” in the second sentence and inserting in lieu*  
23 *thereof “September 30, 1997.”.*

1 **SEC. 4104. SMALL BUSINESS PROCUREMENT ADVISORY**  
2 **COUNCIL.**

3 (a) *ESTABLISHMENT.*—*There is hereby established an*  
4 *interagency council to be known as the “Small Business*  
5 *Procurement Advisory Council” (hereinafter in this section*  
6 *referred to as the “Council”).*

7 (b) *DUTIES.*—*The duties of the Council are—*

8 (1) *to serve as a forum for discussion of issues*  
9 *and problems relating to, and ideas for improvement*  
10 *of, small business procurement matters within the*  
11 *Federal Government;*

12 (2) *to provide information to other departments*  
13 *and agencies of the Federal Government about small*  
14 *business procurement; and*

15 (3) *to issue advisory reports to the Office of Fed-*  
16 *eral Procurement Policy and the Small Business Ad-*  
17 *ministration on small business procurement matters.*

18 (c) *MEMBERSHIP.*—*The Council shall be composed of*  
19 *the following members:*

20 (1) *The Administrator for Federal Procurement*  
21 *Policy (or the designee of the Administrator).*

22 (2) *The Administrator of the Small Business Ad-*  
23 *ministration (or the designee of the Administrator).*

24 (3) *The Director of the Minority Business Devel-*  
25 *opment Agency.*

1           (4) *The head of each Office of Small and Dis-*  
2           *advantaged Business Utilization in each Federal*  
3           *agency having procurement powers.*

4           (d) *COCHAIRMEN.*—*The Council shall be cochaired by*  
5           *the Administrator for Federal Procurement Policy and the*  
6           *Administrator of the Small Business Administration.*

7           (e) *MEETINGS.*—*The Council shall meet at the call of*  
8           *the chairmen, but not less often than four times a year and*  
9           *once each quarter.*

10          (f) *DIRECTOR.*—*The Chief Counsel for Advocacy of the*  
11          *Small Business shall serve as the director of the Council.*  
12          *The director may not vote on matters before the council ex-*  
13          *cept in the case of a tie vote among the members. The duties*  
14          *of the director shall be determined by the chairmen of the*  
15          *Council. The Chief Counsel for Advocacy shall receive no*  
16          *additional pay by reason of the counsel's service as director*  
17          *of the Council.*

18          (g) *ANNUAL REPORT.*—(1) *Not later than 30 days*  
19          *after the end of each fiscal year, the Council shall submit*  
20          *to Congress a report detailing the activities of the Council*  
21          *during the preceding fiscal year in carrying out this sec-*  
22          *tion.*

1 **SEC. 4105. MAXIMUM PRACTICABLE OPPORTUNITIES FOR**  
2 **APPRENTICES ON FEDERAL CONSTRUCTION**  
3 **PROJECTS.**

4 (a) *SENSE OF CONGRESS.*—*It is the sense of the Con-*  
5 *gress that—*

6 (1) *contractors performing Federal construction*  
7 *contracts should, to the maximum extent practicable,*  
8 *give preference in the selection of subcontractors to*  
9 *subcontractors participating in apprenticeship pro-*  
10 *grams registered with the Department of Labor or*  
11 *with a State apprenticeship agency recognized by*  
12 *such Department; and*

13 (2) *contractors and subcontractors performing*  
14 *Federal construction contracts should provide maxi-*  
15 *mum practicable opportunities for employment of ap-*  
16 *prentices who are participating in or who have com-*  
17 *pleted such apprenticeship programs.*

18 (b) *REPORT.*—*Not later than 2 years after the date*  
19 *of the enactment of this Act, the Comptroller General shall*  
20 *submit to the Congress a report on the extent to which con-*  
21 *tractors and subcontractors performing Federal construc-*  
22 *tion contracts have increased subcontractor participation in*  
23 *registered apprenticeship programs.*

1                   **Subtitle C—Miscellaneous**  
2                   **Acquisition Laws**

3   **SEC. 4151. RESTRICTION ON USE OF NONCOMPETITIVE**  
4                   **PROCEDURES FOR PROCUREMENT FROM A**  
5                   **SPECIFIED SOURCE.**

6           (a) *ARMED SERVICES ACQUISITIONS.*—Section 2304 of  
7 *title 10, United States Code, as amended by section 1005,*  
8 *is further amended—*

9                   (1) *in subsection (c)(5), by inserting “subject to*  
10 *subsection (k),” after “(5)”;* and

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

13           “(k)(1) *It is the policy of Congress that no legislation*  
14 *should be enacted that requires a procurement by an agency*  
15 *to be made from a specified non-Federal Government source.*

16           “(2) *A provision of law may not be construed as re-*  
17 *quiring a procurement by an agency to be made from a*  
18 *specified non-Federal Government source unless that provi-*  
19 *sion of law—*

20                   “(A) *specifically refers to this subsection;*

21                   “(B) *specifically identifies the particular non-*  
22 *Federal Government source from which the procure-*  
23 *ment is to made; and*

24                   “(C) *specifically states that the procurement*  
25 *from that source is required by such provision of law*

1       *in contravention of the policy set forth in paragraph*  
2       *(1).”.*

3       **(b) CIVILIAN AGENCY ACQUISITIONS.**—*Section 303 of*  
4       *the Federal Property and Administrative Services Act of*  
5       *1949 (41 U.S.C. 253) is amended—*

6               *(1) in subsection (c)(5), by inserting “subject to*  
7       *subsection (h),” after “(5)”;* and

8               *(2) by adding at the end the following new sub-*  
9       *section:*

10       *“(h)(1) It is the policy of Congress that no legislation*  
11       *should be enacted that requires a procurement by an execu-*  
12       *tive agency to be made from a specified non-Federal Gov-*  
13       *ernment source.*

14       *“(2) A provision of law may not be construed as re-*  
15       *quiring a procurement by an executive agency to be made*  
16       *from a specified non-Federal Government source unless that*  
17       *provision of law—*

18               *“(A) specifically refers to this subsection;*

19               *“(B) specifically identifies the particular non-*  
20       *Federal Government source involved; and*

21               *“(C) specifically states that the procurement*  
22       *from that source is required by such provision of law*  
23       *in contravention of the policy set forth in paragraph*  
24       *(1).”.*

1 **SEC. 4152. REPEAL OF OBSOLETE PROVISION.**

2 *Section 308 of the Federal Property and Administra-*  
3 *tive Services Act of 1949 (41 U.S.C. 258) is repealed.*

4 **TITLE V—STANDARDS OF**  
5 **CONDUCT**

6 **SEC. 5001. CONTRACTING FUNCTIONS PERFORMED BY FED-**  
7 **ERAL PERSONNEL.**

8 *(a) AMENDMENT OF OFPP ACT.—The Office of Fed-*  
9 *eral Procurement Policy Act, as amended by section 1091,*  
10 *is further amended by inserting after section 22 the follow-*  
11 *ing new section 23:*

12 **“SEC. 23. CONTRACTING FUNCTIONS PERFORMED BY FED-**  
13 **ERAL PERSONNEL.**

14 *“(a) LIMITATION ON USE OF CONTRACT ADVISORY*  
15 *AND ASSISTANCE SERVICES.—(1) An executive agency may*  
16 *not provide for an evaluation or analysis of any aspect of*  
17 *a proposal submitted for an acquisition by that executive*  
18 *agency to be conducted by a person who is not an employee*  
19 *of an executive agency or a member of the Armed Forces*  
20 *unless the executive agency determines that employees or*  
21 *members with adequate training and capability to perform*  
22 *the evaluation or analysis are not readily available within*  
23 *the agency or another Federal agency, as determined in ac-*  
24 *cordance with standards and procedures prescribed in the*  
25 *Federal Acquisition Regulation.*

1       “(2) *In the administration of this subsection, the executive agency shall determine in accordance with the standards and procedures set forth in the Federal Acquisition Regulation whether—*

5               “(A) *a sufficient number of employees within the executive agency or another Federal agency are readily available to perform a particular evaluation or analysis for the executive agency making the determination; and*

10              “(B) *the readily available employees have the training and capabilities necessary to perform the evaluation or analysis.*

13       “(b) *DEFINITION.—For purposes of this section, the term ‘employee’ has the meaning given such term in section 2105 of title 5, United States Code.’’.*

16       (b) *REQUIREMENT FOR GUIDANCE AND REGULATIONS.—*

18              (1) *IN GENERAL.—The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—*

22                      (A) *review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and*

1           (B) provide guidance and promulgate regu-  
2           lations regarding—

3                   (i) what actions Federal agencies are  
4                   required to take to determine whether exper-  
5                   tise is readily available within the Federal  
6                   Government before contracting for advisory  
7                   and technical services to conduct acquisi-  
8                   tions; and

9                   (ii) the manner in which Federal em-  
10                  ployees with expertise may be shared with  
11                  agencies needing expertise for such acquisi-  
12                  tions.

13           (2) *DEFINITION.*—In paragraph (1), the term  
14           “employee” has the meaning given such term in sec-  
15           tion 2105 of title 5, United States Code.

16 **SEC. 5002. REPEAL OF EXECUTED REQUIREMENT FOR**  
17 **STUDY AND REPORT.**

18           Section 17 of the Office of Federal Procurement Policy  
19 Act (41 U.S.C. 415) is repealed.

20 **SEC. 5003. INTERESTS OF MEMBERS OF CONGRESS.**

21           Section 3741 of the Revised Statutes (41 U.S.C. 22)  
22 is amended to read as follows:

23           “SEC. 3741. No member of Congress shall be admitted  
24 to any share or part of any contract or agreement made,

1 entered into, or accepted by or on behalf of the United  
2 States, or to any benefit to arise thereupon.”.

3 **SEC. 5004. WAITING PERIOD FOR SIGNIFICANT CHANGES**

4 **PROPOSED FOR ACQUISITION REGULATIONS.**

5 Section 22 of the Office of Federal Procurement Policy  
6 Act (41 U.S.C. 418b) is amended—

7 (1) by striking out “30 days” in subsection (a)  
8 and inserting in lieu thereof “45 days”; and

9 (2) by adding at the end of subsection (d) the fol-  
10 lowing new paragraph:

11 “(3) A policy, regulation, procedure, or form described  
12 in subsection (a) may (notwithstanding that subsection)  
13 take effect earlier than 45 days after the date of publication  
14 thereof in the Federal Register pursuant to subsection (b)  
15 if the officer authorized to issue the procurement policy, reg-  
16 ulation, procedure, or form determines that compelling cir-  
17 cumstances make compliance with the 45-day requirement  
18 under subsection (a) impracticable. However, the policy,  
19 regulation, procedure, or form may not take effect earlier  
20 than 30 days after the publication date except as provided  
21 in paragraph (1).”.

22 **SEC. 5005. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

23 (a) REPEAL.—The following sections of title 10, Unit-  
24 ed States Code, are repealed: sections 2207, 2397, 2397a,  
25 2397b, and 2397c.

1 (b) *CLERICAL AMENDMENTS.*—

2 (1) *The table of sections at the beginning of*  
3 *chapter 131 of such title is amended by striking out*  
4 *the item relating to section 2207.*

5 (2) *The table of sections at the beginning of*  
6 *chapter 141 of such title is amended by striking out*  
7 *the items relating to sections 2397, 2397a, 2397b, and*  
8 *2397c.*

9 **TITLE VI—DEFENSE TRADE AND**  
10 **COOPERATION**

11 **SEC. 6001. EXCEPTION TO BUY AMERICAN ACT FOR MICRO-**  
12 **PURCHASES.**

13 *Section 2 of title III of the Act of March 3, 1933 (41*  
14 *U.S.C. 10a), commonly referred to as the “Buy American*  
15 *Act”, is amended by adding at the end the following: “This*  
16 *section shall not apply to manufactured articles, materials,*  
17 *or supplies procured under any contract the award value*  
18 *of which is less than or equal to the micro-purchase thresh-*  
19 *old under section 4B of the Office of Federal Procurement*  
20 *Policy Act.”.*

21 **SEC. 6002. POLICY ON PURCHASE OF FOREIGN GOODS.**

22 (a) *IN GENERAL.*—*Section 2533 of title 10, United*  
23 *States Code, is amended to read as follows:*

1 **“§ 2533. Policy on the purchase of foreign goods**

2 “(a) DETERMINATION UNDER BUY AMERICAN ACT.—

3 *In determining whether application of the Buy American*  
4 *Act is inconsistent with the public interest, the Secretary*  
5 *of Defense shall give adequate consideration to the following:*

6 “(1) *The bids or proposals of small business*  
7 *firms in the United States which have offered to fur-*  
8 *nish American goods.*

9 “(2) *The bids or proposals of all other firms in*  
10 *the United States which have offered to furnish Amer-*  
11 *ican goods.*

12 “(3) *The balance of payments of the United*  
13 *States.*

14 “(4) *The cost of shipping goods which are other*  
15 *than American goods.*

16 “(5) *Any duty, tariff, or surcharge which may*  
17 *enter into the cost of using goods which are other than*  
18 *American goods.*

19 “(6) *The need to ensure that the Department of*  
20 *Defense has access to advanced state-of-the-art com-*  
21 *mercial technology.*

22 “(7) *The need to protect the national technology*  
23 *and industrial base, to preserve and enhance the na-*  
24 *tional technology employment base, and to provide for*  
25 *a defense mobilization base.*

1           “(8) *The need to maintain the same source of*  
2           *supply for spare and replacement parts either for an*  
3           *end item that qualifies as an American good or to*  
4           *maintain or foster the integration of the military and*  
5           *commercial industrial base.*

6           “(9) *National security interests of the United*  
7           *States.*

8           “(b) *In this section, the term ‘goods which are other*  
9           *than American goods’ means—*

10           “(1) *an end product that is not mined, produced,*  
11           *or manufactured in the United States; or*

12           “(2) *an end product that is manufactured in the*  
13           *United States but which includes components mined,*  
14           *produced, or manufactured outside the United States*  
15           *the aggregate cost of which exceeds the aggregate cost*  
16           *of the components of such end product that are mined,*  
17           *produced, or manufactured in the United States.”.*

18           (b) *CLERICAL AMENDMENT.—The item relating to sec-*  
19           *tion 2533 in the table of sections at the beginning of sub-*  
20           *chapter V of chapter 148 of such title is amended to read*  
21           *as follows:*

          “2533. *Policy on purchase of foreign goods.*”.

22           **SEC. 6003. CONSOLIDATION OF MISCELLANEOUS PROCURE-**  
23           **MENT LIMITATIONS.**

24           *Section 2534 of title 10, United States Code, is amend-*  
25           *ed—*

1           (1) *by striking out subsections (a) through (f);*

2           (2) *by redesignating subsection (g), as added by*  
3 *section 4032, as subsection (d); and*

4           (3) *by inserting after the section heading the fol-*  
5 *lowing:*

6           “(a) *LIMITATION ON CERTAIN PROCUREMENTS.—The*  
7 *Secretary of Defense may procure an item listed in sub-*  
8 *section (b) only if the item is manufactured by an entity*  
9 *that is part of the national technology and industrial base*  
10 *(as defined in section 2491(1) of this title).*

11          “(b) *COVERED ITEMS.—Subsection (a) applies to the*  
12 *following:*

13           “(1) *BUSES.—Multipassenger motor vehicles*  
14 *(buses).*

15           “(2) *CHEMICAL WEAPONS ANTIDOTE.—Chemical*  
16 *weapons antidote contained in automatic injectors (or*  
17 *components for such injectors), but only if the com-*  
18 *pany that manufactures the item not only manufac-*  
19 *tures it in the United States but also meets the follow-*  
20 *ing requirements:*

21           “(A) *The company is an existing producer*  
22 *under the industrial preparedness program at*  
23 *the time the contract is awarded.*

24           “(B) *The company has received all required*  
25 *regulatory approvals.*

1           “(C) *The company has the plant, equip-*  
2           *ment, and personnel to perform the contract in*  
3           *existence in the United States at the time the*  
4           *contract is awarded.*

5           “(3) *VALVES AND MACHINE TOOLS.—(A) Items*  
6           *in the following categories:*

7           “(i) *Powered and non-powered valves in*  
8           *Federal Supply Classes 4810 and 4820 used in*  
9           *pipng for naval surface ships and submarines.*

10          “(ii) *Machine tools in the Federal Supply*  
11          *Classes for metal-working machinery numbered*  
12          *3405, 3408, 3410 through 3419, 3426, 3433,*  
13          *3438, 3441 through 3443, 3445, 3446, 3448,*  
14          *3449, 3460, and 3461.*

15          “(B) *Contracts for the procurement of items de-*  
16          *scribed in subparagraph (A) include contracts—*

17          “(i) *for the use of such items in any prop-*  
18          *erty under the control of the Department of De-*  
19          *fense, including Government-owned, contractor-*  
20          *operated facilities; and*

21          “(ii) *entered into by contractors on behalf of*  
22          *the Department of Defense for the purposes of*  
23          *providing such items to other contractors as Gov-*  
24          *ernment-furnished equipment.*

1           “(C) In any case in which a contract for items  
2 described in subparagraph (A) includes the procure-  
3 ment of more than one Federal Supply Class of ma-  
4 chine tools or machine tools and accessories, each sup-  
5 ply class shall be evaluated separately for purposes of  
6 determining whether the limitation in this subsection  
7 applies.

8           “(D) This paragraph is effective through fiscal  
9 year 1996.

10           “(4) AIR CIRCUIT BREAKERS.—Air circuit break-  
11 ers for naval vessels.

12           “(5) SONOBUOYS.—Sonobuoys.

13           “(6) BALL BEARINGS AND ROLLER BEARINGS.—  
14 Ball bearings and roller bearings, in accordance with  
15 subpart 225.71 of part 225 of the Defense Federal Ac-  
16 quisition Regulation Supplement, as in effect on Oc-  
17 tober 23, 1992. This paragraph is effective through  
18 fiscal year 1995.

19           “(c) EXCEPTIONS.—The Secretary of Defense may  
20 waive the limitation in subsection (a) with respect to the  
21 procurement of an item listed in subsection (b) if the Sec-  
22 retary determines that any of the following apply:

23           “(1) Application of the limitation would cause  
24 unreasonable costs or delays to be incurred.

1           “(2) United States producers of the item would  
2 not be jeopardized by competition from a foreign  
3 country and that country does not discriminate  
4 against defense items produced in the United States  
5 to a greater degree than the United States discrimi-  
6 nates against defense items produced in that country.

7           “(3) Application of the limitation would impede  
8 cooperative programs entered into between the De-  
9 partment of Defense and a foreign country and that  
10 country does not discriminate against defense items  
11 produced in the United States to a greater degree  
12 than the United States discriminates against defense  
13 items produced in that country.

14           “(4) Satisfactory quality items manufactured by  
15 an entity that is part of the national technology and  
16 industrial base (as defined in section 2491(1) of this  
17 title) are not available.

18           “(5) Application of the limitation would result  
19 in the existence of only one source for the item that  
20 is an entity that is part of the national technology  
21 and industrial base (as defined in section 2491(1) of  
22 this title).

23           “(6) The procurement is for an amount less than  
24 the simplified acquisition threshold and simplified  
25 purchase procedures are being used.



1       (b) *REPEAL OF REPORTING REQUIREMENT.*—Section  
 2 9096(b) of Public Law 102–396 (106 Stat. 1924; 41 U.S.C.  
 3 10b–2(b)) is repealed.

4       (c) *REPEAL OF STUDIES OF WAIVERS.*—Section 306  
 5 of the Trade Agreements Act of 1979 (19 U.S.C. 2516), re-  
 6 lating to studies of certain employment effects and procure-  
 7 ment effects of a waiver of the Buy American Act, is re-  
 8 pealed.

9       **TITLE VII—COMMERCIAL ITEMS**  
 10           **Subtitle A—Definitions and**  
 11                   **Regulations**

12       **SEC. 7001. DEFINITIONS.**

13       (a) *DEFINITIONS.*—Section 4 of the Office of Federal  
 14 Procurement Policy Act (41 U.S.C. 403) is amended by  
 15 adding at the end the following new paragraphs:

16           “(12) The term ‘commercial item’ means any of  
 17 the following:

18                   “(A) Any item of a type customarily used  
 19 in the course of normal business operations for  
 20 other than Federal Government purposes, that—

21                           “(i) has been sold, leased, or licensed to  
 22 the general public or to domestic State, or  
 23 local government entities; or

1                   “(ii) has been offered for sale, lease, or  
2                   license to the general public or to domestic  
3                   State, or local government entities.

4                   “(B) An item intended to be used in the  
5                   course of normal business operations for other  
6                   than Federal Government purposes that is not  
7                   yet available in the commercial marketplace, but  
8                   will be available in the commercial marketplace  
9                   in time to satisfy the delivery requirements  
10                  under a Federal Government solicitation.

11                  “(C) Any item that, but for—

12                   “(i) modifications of a type customar-  
13                   ily available in the commercial market-  
14                   place, or

15                   “(ii) minor modifications made to  
16                   meet Federal Government requirements,  
17                  would satisfy the criteria in subparagraph (A)  
18                  or (B).

19                  “(D) Any combination of items meeting the  
20                  requirements of subparagraph (A), (B), or (C)  
21                  that are of a type customarily combined and sold  
22                  in combination to the general public.

23                  “(E) Installation services, maintenance  
24                  services, repair services, training services, and  
25                  other services if such services are procured for

1 support of an item referred to in subparagraph  
2 (A), (B), (C), or (D) and if the source of such  
3 services—

4 “(i) offers such services to the general  
5 public and the Federal Government contem-  
6 poraneously and under similar terms and  
7 conditions; and

8 “(ii) offers to use the same work force  
9 for providing the Federal Government with  
10 such services as the source uses for provid-  
11 ing such services to the general public.

12 “(F) Services offered and sold competitively,  
13 in significant quantities, in the commercial mar-  
14 ketplace at established catalog prices or standard  
15 rates and under standard commercial terms and  
16 conditions.

17 “(G) Any item, combination of items, or  
18 service referred to in subparagraphs (A) through  
19 (F) notwithstanding the fact that the item, com-  
20 bination of items, or service is transferred be-  
21 tween or among separate divisions, subsidiaries,  
22 or affiliates of a contractor.

23 “(13) The term ‘nondevelopmental item’ means  
24 any of the following:

1           “(A) Any previously developed item of sup-  
2           ply that is in use by a department or agency of  
3           the United States, a State or local government,  
4           or a foreign government with which the United  
5           States has a mutual defense cooperation agree-  
6           ment.

7           “(B) Any item of supply described in sub-  
8           paragraph (A) that requires only minor modi-  
9           fication or modification of the type customarily  
10          available in the commercial marketplace in order  
11          to meet the requirements of the procuring depart-  
12          ment or agency.

13          “(C) Any item of supply currently being  
14          produced that does not meet the requirements of  
15          subparagraph (A) or (B) solely because the item  
16          is not yet in use.

17          “(14) The term ‘component’ means any item  
18          supplied to the Federal Government as part of an end  
19          item or of another component.

20          “(15) The term ‘commercial component’ means  
21          any component that is a commercial item.”.

22          (b) *STYLISTIC AMENDMENTS.*—Such section is further  
23          amended—

1           (1) by striking out “Act—” in the matter preced-  
2           ing paragraph (1) and inserting in lieu thereof  
3           “Act.”;

4           (2) by capitalizing the first letter of the first  
5           word in each of paragraphs (1) through (11);

6           (3) by striking out the semicolon at the end of  
7           each of paragraphs (1), (2), (3), (5), (6), (7), (8), and  
8           (9) and inserting in lieu thereof a period; and

9           (4) by striking out “; and” at the end of para-  
10          graphs (4) and (10) and inserting in lieu thereof a  
11          period.

12   **SEC. 7002. REGULATIONS ON ACQUISITION OF COMMER-**  
13                           **CIAL ITEMS.**

14          (a) *IN GENERAL.*—The Federal Acquisition Regula-  
15          tion shall provide regulations to implement paragraphs  
16          (12) through (15) of section 4 of the Office of Federal Pro-  
17          curement Policy Act, chapter 136 of title 10, United States  
18          Code, and sections 314 through 314D of the Federal Prop-  
19          erty and Administrative Services Act of 1949.

20          (b) *TERMS AND CONDITIONS.*—The regulations pre-  
21          scribed under subsection (a) shall contain a set or sets of  
22          terms and conditions to be included in contracts for the ac-  
23          quisition of commercial end items. Such terms and condi-  
24          tions shall, to the maximum extent practicable, include only  
25          those contract clauses that are—

1           (1) *required to implement provisions of law ap-*  
2           *plicable to commercial item acquisitions; or*

3           (2) *consistent with standard commercial prac-*  
4           *tice.*

5           (c) *TERMS AND CONDITIONS FOR COMPONENTS.—Such*  
6           *regulations shall provide that a prime contractor furnishing*  
7           *commercial items or items other than commercial items as*  
8           *items or components shall not be required to apply to any*  
9           *of its divisions, subsidiaries, affiliates, subcontractors, or*  
10          *suppliers that are furnishing commercial items as compo-*  
11          *nents any clause, term, or condition except those that are—*

12           (1) *required to implement provisions of law ap-*  
13           *plicable to subcontractors furnishing commercial*  
14           *items; or*

15           (2) *determined to be consistent with standard*  
16           *commercial practice.*

17          (d) *MARKET ACCEPTANCE.—The regulations pre-*  
18          *scribed under subsection (a) shall provide that, under ap-*  
19          *propriate conditions, the agency head may require an*  
20          *offeror to demonstrate, as a condition for being considered*  
21          *responsive, that the items offered meet, among other criteria,*  
22          *market acceptance criteria, unless such item has been satis-*  
23          *factorily supplied to an executive agency under current or*  
24          *recent contracts for the same or similar requirements.*

1       (e) *USE OF FIXED PRICE CONTRACTS.*—The regula-  
2       tions prescribed under subsection (a) shall include a re-  
3       quirement that firm, fixed price contracts, or fixed price  
4       contracts with economic price adjustment provisions, be  
5       used for the acquisition of commercial items and compo-  
6       nents.

7       (f) *TERM OF CONTRACTS.*—The regulations prescribed  
8       under subsection (a) shall provide that, to the extent prac-  
9       ticable, contracts for acquisition of commercial items shall  
10      not require contract performance for a term longer than  
11      customary industry practice for the item being acquired.  
12      A contracting officer may include in a contract provisions  
13      for economic price adjustment if an extended period of per-  
14      formance under the contract cannot be avoided.

15      (g) *CONTRACT QUALITY REQUIREMENTS.*—The regula-  
16      tions prescribed under subsection (a) shall include provi-  
17      sions that—

18           (1) permit, to the maximum extent practicable,  
19      a contractor under a commercial items acquisition to  
20      use the existing quality assurance system of the con-  
21      tractor as a substitute for compliance with an other-  
22      wise applicable requirement for the Government to in-  
23      spect or test the commercial items before the contrac-  
24      tor's tender of those items for acceptance by the Gov-  
25      ernment;

1           (2) require that, to the maximum extent prac-  
2           ticable, the executive agency take advantage of war-  
3           ranties (including extended warranties) offered by  
4           offerors of commercial items and use such warranties  
5           for the repair and replacement of commercial items;  
6           and

7           (3) set forth guidance regarding the use of past  
8           performance of commercial items and sources as a  
9           factor in contract award decisions.

10          (h) *DEFENSE CONTRACT CLAUSES.*—

11           (1) *REPEAL OF DOD AUTHORITY.*—Section  
12           824(b) of the National Defense Authorization Act for  
13           Fiscal Years 1990 and 1991 (Public Law 101–189; 10  
14           U.S.C. 2325 note) is repealed.

15           (2) *SAVINGS PROVISION.*—Notwithstanding sub-  
16           sections (b) and (c), a contract of the Department of  
17           Defense entered into before October 1, 1994, and a  
18           subcontract entered into before such date under such  
19           a contract, may include clauses developed pursuant to  
20           paragraphs (2) and (3) of section 824(b) of the Na-  
21           tional Defense Authorization Act for Fiscal Years  
22           1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325  
23           note).

1                   **Subtitle B—Armed Services**  
 2                                   **Acquisitions**

3   **SEC. 7101. ESTABLISHMENT OF NEW CHAPTER IN TITLE 10.**

4           (a) *ESTABLISHMENT.*—Part IV of subtitle A of title  
 5 10, United States Code, is amended by inserting before  
 6 chapter 137 the following new chapter 136:

7                   **“CHAPTER 136—PROCUREMENT OF**  
 8                                   **COMMERCIAL ITEMS**

“Sec.

“2281. Definitions.

“2282. Preference for acquisition of commercial items.

“2283. Exception to cost or pricing data requirement for commercial items.

“2284. Principle of construction with future laws.

“2285. Inapplicability of certain provisions of law.”.

9           (b) *CLERICAL AMENDMENT.*—The tables of chapters at  
 10 the beginning of subtitle A of title 10, United States Code,  
 11 and the beginning of part IV of such subtitle are amended  
 12 by inserting before the item relating to chapter 137 the fol-  
 13 lowing new item:

“136. Procurement of Commercial Items ..... 2281”.

14   **SEC. 7102. DEFINITIONS.**

15           Chapter 136 of title 10, United States Code, as added  
 16 by section 7001, is amended by adding after the table of  
 17 sections the following:

18   **“§ 2281. Definitions**

19           “In this chapter:

20                   “(1) The terms ‘commercial item’,  
 21                   ‘nondevelopmental item’, ‘component’, and ‘commer-

1        *cial component' have the meanings provided in sec-*  
 2        *tion 4 of the Office of Federal Procurement Policy*  
 3        *Act.*

4            *“(2) The term ‘head of an agency’ means the*  
 5        *Secretary of Defense, the Secretary of Transportation,*  
 6        *and the Administrator of the National Aeronautics*  
 7        *and Space Administration.*

8            *“(3) The term ‘agency’ means the Department of*  
 9        *Defense, the Coast Guard, and the National Aero-*  
 10       *nautics and Space Administration.”.*

11    **SEC. 7103. PREFERENCE FOR ACQUISITION OF COMMER-**  
 12                                    **CIAL ITEMS.**

13        *(a) IN GENERAL.—Chapter 136 of title 10, United*  
 14        *States Code, as amended by section 7102, is further amend-*  
 15        *ed by adding after section 2281 the following new section:*

16    **“§2282. Preference for acquisition of commercial**  
 17                                    **items**

18        *“(a) PREFERENCE.—The head of an agency shall en-*  
 19        *sure that, to the maximum extent practicable—*

20            *“(1) requirements of the agency with respect to*  
 21        *a procurement of supplies or services are stated in*  
 22        *terms of—*

23                    *“(A) functions to be performed;*

24                    *“(B) performance required; or*

25                    *“(C) essential physical characteristics;*

1           “(2) such requirements are defined so that com-  
2           mercial items may be procured to fulfill such require-  
3           ments; and

4           “(3) such requirements are fulfilled through the  
5           procurement of commercial items.

6           “(b) IMPLEMENTATION.—The head of an agency shall  
7           ensure that procurement officials in that agency, to the  
8           maximum extent practicable—

9           “(1) acquire commercial items to meet the needs  
10          of the agency;

11          “(2) require prime contractors and subcontractors  
12          at all levels under the agency contracts to incor-  
13          porate commercial items as components of items sup-  
14          plied to the agency;

15          “(3) modify requirements in appropriate cases to  
16          ensure that the requirements can be met by commer-  
17          cial items;

18          “(4) state specifications in terms that enable and  
19          encourage bidders and offerors to supply commercial  
20          items;

21          “(5) revise the agency’s procurement policies,  
22          practices, and procedures not required by law to re-  
23          duce any impediments in those policies, practices,  
24          and procedures to the acquisition of commercial  
25          items; and

1           “(6) require training of appropriate personnel in  
2           the acquisition of commercial items.

3           “(c) *EXISTING OR PRIOR SOURCES OF*  
4 *NONDEVELOPMENTAL ITEMS.*—(1) Notwithstanding sub-  
5 section (a), an agency may, until five years after the date  
6 of the enactment of the Federal Acquisition Improvement  
7 Act of 1994, determine that it is in the Government’s inter-  
8 ests to permit existing or prior sources of nondevelopmental  
9 items to participate in a competition for a commercial item  
10 in a case in which a nondevelopmental item will compete  
11 with a commercial item under the same terms, conditions,  
12 and evaluation and award criteria.

13           “(2) Nondevelopmental items furnished by an existing  
14 or prior source that must be modified to meet the require-  
15 ments of a solicitation for commercial items may be offered  
16 under such a solicitation, but only in a case in which the  
17 modifications—

18           “(A) are necessary to comply with the Govern-  
19 ment’s solicitation requirements; and

20           “(B) do not significantly alter the function or es-  
21 sential physical characteristics of the items to be sup-  
22 plied.

23           “(3) The policies, procedures, solicitation provisions,  
24 and contract clauses applicable to commercial items under  
25 this chapter also shall apply to nondevelopmental items fur-

1 nished by an existing or prior source that is permitted to  
2 participate in a competition conducted under this title.

3 “(d) *PRELIMINARY MARKET RESEARCH.*—(1) The  
4 head of an agency shall conduct market research appro-  
5 priate to the circumstances—

6 “(A) before developing new specifications for a  
7 procurement by that agency; and

8 “(B) before soliciting bids or proposals for a con-  
9 tract in excess of the simplified acquisition threshold.

10 “(2) The head of an agency shall use the results of mar-  
11 ket research to determine whether there are commercial  
12 items available that—

13 “(A) meet the agency’s requirements;

14 “(B) could be modified to meet the agency’s re-  
15 quirements; or

16 “(C) could meet the agency’s requirements if  
17 those requirements were modified to a reasonable ex-  
18 tent.”.

19 (b) *REPEAL OF SUPERSEDED PROVISION.*—Section  
20 2325 of title 10, United States Code, is repealed. The table  
21 of sections at the beginning of chapter 137 of such title is  
22 amended by striking out the item relating to section 2325.

1 **SEC. 7104. EXCEPTION TO COST OR PRICING DATA RE-**  
2 **QUIREMENTS FOR COMMERCIAL ITEMS.**

3 (a) *IN GENERAL.*—Chapter 136 of title 10, United  
4 States Code, as amended by section 7103, is further amend-  
5 ed by adding after section 2282 the following new section:

6 **“§2283. Exception to cost or pricing data require-**  
7 **ments for commercial items**

8 “(a) *EXEMPTION FROM SECTION 2306a IF PRICE*  
9 *BASED ON ADEQUATE PRICE COMPETITION OR ESTAB-*  
10 *LISHED PRICES.*—In any procurement of a commercial  
11 item, when the agreed-upon price of the commercial item  
12 is based on adequate price competition or on established  
13 catalog or market prices of items sold in sufficient quan-  
14 tities to the general public—

15 “(1) the procurement shall be exempt from sec-  
16 tion 2306a of this title; and

17 “(2) to the maximum extent practicable, the head  
18 of the agency conducting the procurement may not re-  
19 quire any additional information from the offeror to  
20 determine price reasonableness.

21 “(b) *REQUIREMENT TO DETERMINE PRICE REASON-*  
22 *ABLENESS FOR NONCOMPETITIVE PROCUREMENTS.*—In  
23 any case in which it is not practicable to conduct a procure-  
24 ment of a commercial item on a competitive basis and the  
25 procurement is not covered by subsection (a) or by an excep-  
26 tion in subsection (b) of section 2306a of this title, the con-

1 *tracting officer shall use price analysis to determine wheth-*  
2 *er the price of the contract is fair and reasonable. If the*  
3 *contracting officer is able to determine through price analy-*  
4 *sis that the price is reasonable, the procurement shall be*  
5 *exempt from section 2306a of this title. Price analysis*  
6 *under this subsection shall be conducted by developing or*  
7 *obtaining from the offeror or contractor, or from another*  
8 *source or sources, in accordance with standards and proce-*  
9 *dures set forth in Federal Acquisition Regulations, informa-*  
10 *tion on prices at which the same or similar items have been*  
11 *sold in the commercial market that is adequate for evaluat-*  
12 *ing the reasonableness of the price of the contract.*

13       “(c) *AUTHORITY TO REQUEST COST OR PRICING DATA*  
14 *WHEN PRICE REASONABLENESS CANNOT BE DETER-*  
15 *MINED.—In any case in which a contracting officer is un-*  
16 *able to determine under subsection (b) that a price is rea-*  
17 *sonable, the contracting officer, with the prior approval of*  
18 *the head of the procuring activity, may require cost or pric-*  
19 *ing data under section 2306a of this title.*

20       “(d) *RIGHT TO AUDIT.—(1) The head of an agency*  
21 *is authorized to audit all documentation provided by an*  
22 *offeror under subsection (b) or (c) and all books and records*  
23 *of the offeror directly relating to such documentation, except*  
24 *that, if the offeror has made no representation as to the*

1 *completeness of the documentation supplied, the head of the*  
2 *agency is not authorized to audit for completeness.*

3 *“(2) The authority under this subsection shall expire—*

4 *“(A) one year after the date of commencement of*  
5 *performance of the contract, or one year after the date*  
6 *of commencement of performance of the modification*  
7 *of the contract, with respect to which the information*  
8 *was provided; or*

9 *“(B) on such other date agreed upon by the par-*  
10 *ties at the time of contract award or contract*  
11 *definitization.*

12 *“(e) LIMITATIONS ON REQUESTS FOR DATA.—The*  
13 *Federal Acquisition Regulation shall establish reasonable*  
14 *limitations on requests under this section for sales data re-*  
15 *lating to commercial items.*

16 *“(f) FORM OF INFORMATION.—In conducting a price*  
17 *analysis, or in requiring any additional information from*  
18 *an offeror, a contracting officer may request only that infor-*  
19 *mation from an offeror that is in the form regularly main-*  
20 *tained by the offeror in commercial operations, adequate*  
21 *to demonstrate the market price of the item or items, or*  
22 *otherwise needed to establish a fair and reasonable price.*

23 *“(g) CONFIDENTIALITY.—All documentation received*  
24 *from an offeror, if not otherwise in the public domain and*  
25 *if requested by the offeror and marked as proprietary, shall*

1 *be treated by the Government as confidential and exempt*  
2 *from disclosure to the extent permitted by section 552 of*  
3 *title 5.”.*

4 (b) *CROSS REFERENCE.*—*Section 2306a of title 10,*  
5 *United States Code, is amended by adding at the end the*  
6 *following new subsection:*

7 “(h) *EXCEPTIONS REGARDING COMMERCIAL ITEMS.*—  
8 *For provisions relating to exceptions for procurements of*  
9 *commercial items, see section 2283 of this title.”.*

10 **SEC. 7105. PRINCIPLE OF CONSTRUCTION WITH FUTURE**  
11 **LAWS.**

12 *Chapter 136 of title 10, United States Code, as amend-*  
13 *ed by section 7104, is further amended by adding after sec-*  
14 *tion 2283 the following new section:*

15 **“§ 2284. Principle of construction with future laws**

16 *“A provision of law enacted after the date of the enact-*  
17 *ment of the Federal Acquisition Improvement Act of 1994*  
18 *may not be construed as applicable to purchases of commer-*  
19 *cial items by an agency unless that provision of law specifi-*  
20 *cally refers to this section and specifically states that such*  
21 *provision of law modifies or supersedes a provision of this*  
22 *chapter.*

1 **SEC. 7106. INAPPLICABILITY OF CERTAIN PROVISIONS OF**  
2 **LAW.**

3 (a) *INAPPLICABLE PROVISIONS.*—Chapter 136 of title  
4 10, United States Code, as amended by section 7105, is fur-  
5 ther amended by adding after section 2284 the following  
6 new section:

7 **“§ 2285. Inapplicability of certain provisions of law**

8 “(a) *PROVISIONS INAPPLICABLE TO PRIME CONTRAC-*  
9 *TORS.*—The following provisions of law (and regulations  
10 prescribed under such provisions) shall not apply to any  
11 contract entered into by an agency for the procurement of  
12 a commercial item:

13 “(1) Section 2306(b) of this title (relating to pro-  
14 hibition on contingent fees).

15 “(2) Section 2320 of this title (relating to rights  
16 in technical data).

17 “(3) Section 2321 of this title (relating to vali-  
18 dation of proprietary data restrictions).

19 “(4) Section 2324 of this title (relating to allow-  
20 able costs).

21 “(5) Section 2384(b) of this title (relating to re-  
22 quirement to identify suppliers and sources of sup-  
23 plies).

24 “(6) Section 2393(d) of this title (relating to  
25 prohibition against doing business with certain  
26 offerors or contractors).

1           “(7) Section 2402 of this title (relating to prohi-  
2           bition on limitation of subcontractor direct sales).

3           “(8) Section 2408(a) of this title (relating to  
4           prohibition on persons convicted of defense contract-  
5           related felonies).

6           “(9) Section 2410b of this title (relating to con-  
7           tractor inventory accounting system standards).

8           “(10) Section 843 of Public Law 103–160 (107  
9           Stat. 1720) (relating to reports of defense contractors  
10          of dealings with terrorist countries).

11          “(11) Section 26 of the Office of Federal Procure-  
12          ment Policy Act (41 U.S.C. 422) (relating to cost ac-  
13          counting standards board).

14          “(12) Section 27(e) of the Office of Federal Pro-  
15          curement Policy Act (41 U.S.C. 423(e)) (relating to  
16          procurement integrity).

17          “(13) The Drug-Free Workplace Act of 1988  
18          (subtitle D of title V of Public Law 100–690; 41  
19          U.S.C. 701 et seq.).

20          “(b) PROVISIONS INAPPLICABLE TO SUBCONTRACTORS  
21          AND OTHER ENTITIES.—

22          “(1) LAWS INAPPLICABLE.—The following provi-  
23          sions of law (and regulations prescribed under such  
24          provisions) shall not apply to any entity described in  
25          paragraph (2):

1           “(A) Each provision of law listed under  
2 subsection (a).

3           “(B) Section 2534 of this title (relating to  
4 miscellaneous limitations on procurement).

5           “(2) COVERED ENTITIES.—Paragraph (1) ap-  
6 plies to each of the following:

7           “(A) Any division, subsidiary, or affiliate  
8 of a prime contractor (other than the division,  
9 subsidiary, or affiliate that is contracting with  
10 the Government under the prime contract) or of  
11 a subcontractor of a prime contractor, if such di-  
12 vision, subsidiary, or affiliate is furnishing a  
13 commercial item to the prime contractor or sub-  
14 contractor for purposes of carrying out the prime  
15 contract or subcontract.

16           “(B) Any subcontractor or supplier of a  
17 prime contractor, if the subcontractor or supplier  
18 is furnishing a commercial item to the prime  
19 contractor for purposes of carrying out the prime  
20 contract.”.

21 **SEC. 7107. CONFORMING AMENDMENTS RELATING TO INAP-**  
22 **PLICABILITY OF CERTAIN PROVISIONS OF**  
23 **LAW.**

24           (a) *INAPPLICABILITY OF REQUIREMENT FOR CON-*  
25 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section

1 2306(b) of title 10, United States Code, as amended by sec-  
2 tion 4032(a), is further amended by inserting before the pe-  
3 riod at the end of the sentence added by that section the  
4 following: “or to a contract for the acquisition of commer-  
5 cial items”.

6 (b) *INAPPLICABILITY OF REGULATIONS ON RIGHTS IN*  
7 *TECHNICAL DATA.*—Section 2320 of title 10, United States  
8 Code, is amended by adding at the end the following new  
9 subsection:

10 “(e) The regulations prescribed under subsection (a)  
11 shall not apply to contracts for the purchase of commercial  
12 items.”.

13 (c) *INAPPLICABILITY OF REQUIREMENT FOR VALIDA-*  
14 *TION OF PROPRIETARY DATA RESTRICTIONS.*—Section  
15 2321(a) of title 10, United States Code, is amended by in-  
16 serting before the period at the end the following: “, other  
17 than a contract for supplies or services that are commercial  
18 items”.

19 (d) *INAPPLICABILITY OF REQUIREMENT TO IDENTIFY*  
20 *SUPPLIERS AND SOURCES OF SUPPLIES.*—Paragraph (2)  
21 of section 2384(b) of title 10, United States Code, is amend-  
22 ed to read as follows:

23 “(2) The regulations prescribed pursuant to paragraph  
24 (1) do not apply to a contract that requires the delivery  
25 of supplies that are commercial items.”.

1           (e) *INAPPLICABILITY OF PROHIBITION AGAINST DOING*  
2 *BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.*—  
3 *Section 2393(d) of title 10, United States Code, as amended*  
4 *by section 4032(d), is further amended by adding at the*  
5 *end the following: “The requirement shall not apply in the*  
6 *case of a subcontract for the acquisition of commercial*  
7 *items.”.*

8           (f) *INAPPLICABILITY OF PROHIBITION ON LIMITATION*  
9 *OF SUBCONTRACTOR DIRECT SALES.*—*Section 2402 of title*  
10 *10, United States Code, as amended by section 4032(e), is*  
11 *further amended by adding at the end the following new*  
12 *subsection:*

13           “(d) *An agreement between the contractor in a con-*  
14 *tract for the acquisition of commercial items and a sub-*  
15 *contractor under such contract that restricts sales by such*  
16 *subcontractor directly to persons other than the contractor*  
17 *may not be considered to unreasonably restrict sales by that*  
18 *subcontractor to the United States in violation of the provi-*  
19 *sion included in such contract pursuant to subsection (a)*  
20 *if the agreement does not result in the United States being*  
21 *treated differently with regard to the restriction than any*  
22 *other prospective purchaser of such commercial items from*  
23 *that subcontractor.”.*

24           (g) *INAPPLICABILITY OF PROHIBITION ON PERSONS*  
25 *CONVICTED OF DEFENSE-RELATED FELONIES.*—*Section*

1 2408(a) of title 10, United States Code, is amended by add-  
2 ing at the end of paragraph (4), as added by section  
3 4032(f), the following: “The term does not include a con-  
4 tract for the purchase of commercial items.”.

5 (h) *INAPPLICABILITY OF CONTRACTOR INVENTORY AC-*  
6 *COUNTING SYSTEM STANDARDS.*—Section 2410b of title 10,  
7 United States Code, is amended by adding after subsection  
8 (b), as added by section 4032(g), the following:

9 “(c) The regulations prescribed pursuant to subsection  
10 (a) shall not apply to a contract for the purchase of com-  
11 mercial items.”.

## 12 **Subtitle C—Civilian Agency** 13 **Acquisitions**

### 14 **SEC. 7201. DEFINITIONS.**

15 Title III of the Federal Property and Administrative  
16 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended  
17 by section 1553, is further amended by adding after section  
18 313 the following new section:

### 19 **“SEC. 314. DEFINITIONS RELATING TO PROCUREMENT OF** 20 **COMMERCIAL ITEMS.**

21 “As used in this title, the terms ‘commercial item’,  
22 ‘nondevelopmental item’, ‘component’, and ‘commercial  
23 component’ have the meanings provided in section 4 of the  
24 Office of Federal Procurement Policy Act.”.

1 **SEC. 7202. PREFERENCE FOR ACQUISITION OF COMMER-**  
2 **CIAL ITEMS.**

3 *Title III of the Federal Property and Administrative*  
4 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*  
5 *by section 7201, is further amended by adding after section*  
6 *314 the following new section:*

7 **“SEC. 314A. PREFERENCE FOR ACQUISITION OF COMMER-**  
8 **CIAL ITEMS.**

9 *“(a) PREFERENCE.—The head of each executive agency*  
10 *shall ensure that, to the maximum extent practicable—*

11 *“(1) requirements of the agency with respect to*  
12 *a procurement of supplies or services are stated in*  
13 *terms of—*

14 *“(A) functions to be performed;*

15 *“(B) performance required; or*

16 *“(C) essential physical characteristics;*

17 *“(2) such requirements are defined so that com-*  
18 *mercial items may be procured to fulfill such require-*  
19 *ments; and*

20 *“(3) such requirements are fulfilled through the*  
21 *procurement of commercial items.*

22 *“(b) IMPLEMENTATION.—The head of each executive*  
23 *agency shall ensure that procurement officials in that execu-*  
24 *tive agency, to the maximum extent practicable—*

25 *“(1) acquire commercial items to meet the needs*  
26 *of the executive agency;*

1           “(2) require prime contractors and subcontractors at all levels under the executive agency contracts to incorporate commercial items as components of items supplied to the executive agency;

2           “(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items;

3           “(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items;

4           “(5) revise the executive agency’s procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

5           “(6) require training of appropriate personnel in the acquisition of commercial items.

6           “(c) *EXISTING OR PRIOR SOURCES OF NONDEVELOPMENTAL ITEMS.*—(1) Notwithstanding subsection (a), the head of an executive agency may, until five years after the date of the enactment of the Federal Acquisition Improvement Act of 1994, determine that it is in the Government’s interests to permit existing or prior sources of nondevelopmental items to participate in a competition for a commercial item in a case in which a

1 *nondevelopmental item will compete with a commercial*  
2 *item under the same terms, conditions, and evaluation and*  
3 *award criteria.*

4       “(2) *Nondevelopmental items furnished by an existing*  
5 *or prior source that must be modified to meet the require-*  
6 *ments of a solicitation for commercial items may be offered*  
7 *under such a solicitation, but only in a case in which the*  
8 *modifications—*

9               “(A) *are necessary to comply with the Govern-*  
10 *ment’s solicitation requirements; and*

11               “(B) *do not significantly alter the function or es-*  
12 *sential physical characteristics of the items to be sup-*  
13 *plied.*

14       “(3) *The policies, procedures, solicitation provisions,*  
15 *and contract clauses applicable to commercial items under*  
16 *this chapter also shall apply to nondevelopmental items fur-*  
17 *nished by an existing or prior source that is permitted to*  
18 *participate in a competition conducted under this title.*

19       “(d) *PRELIMINARY MARKET RESEARCH.—(1) The*  
20 *head of an executive agency shall conduct market research*  
21 *appropriate to the circumstances—*

22               “(A) *before developing new specifications for a*  
23 *procurement by that executive agency; and*

24               “(B) *before soliciting bids or proposals for a con-*  
25 *tract in excess of the simplified acquisition threshold.*

1       “(2) The head of an executive agency shall use the re-  
2 sults of market research to determine whether there are com-  
3 mercial items available that—

4               “(A) meet the executive agency’s requirements;

5               “(B) could be modified to meet the executive  
6 agency’s requirements; or

7               “(C) could meet the executive agency’s require-  
8 ments if those requirements were modified to a rea-  
9 sonable extent.”.

10 **SEC. 7203. EXCEPTION TO COST OR PRICING DATA RE-**  
11 **QUIREMENTS FOR COMMERCIAL ITEMS.**

12       Title III of the Federal Property and Administrative  
13 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended  
14 by section 7202, is further amended by adding after section  
15 314A the following new section:

16 **“SEC. 314B. EXCEPTION TO COST OR PRICING DATA RE-**  
17 **QUIREMENTS FOR COMMERCIAL ITEMS.**

18       “(a) EXEMPTION FROM SECTION 304B IF PRICE  
19 BASED ON ADEQUATE PRICE COMPETITION OR ESTAB-  
20 LISHED PRICES.—In any procurement of a commercial  
21 item, when the agreed-upon price of the commercial item  
22 is based on adequate price competition or on established  
23 catalog or market prices of items sold in sufficient quan-  
24 tities to the general public—

1           “(1) the procurement shall be exempt from sec-  
2           tion 304B of this title; and

3           “(2) to the maximum extent practicable, the ex-  
4           ecutive agency may not require any additional infor-  
5           mation from the offeror to determine price reasonable-  
6           ness.

7           “(b) *REQUIREMENT TO DETERMINE PRICE REASON-*  
8           *ABLENESS FOR NONCOMPETITIVE PROCUREMENTS.*—In  
9           any case in which it is not practicable to conduct a procure-  
10          ment of a commercial item on a competitive basis and the  
11          procurement is not covered by subsection (a) or by an excep-  
12          tion in subsection (b) of section 304B, the contracting officer  
13          shall use price analysis to determine whether the price is  
14          fair and reasonable. If the contracting officer is able to de-  
15          termine through price analysis that the price is reasonable,  
16          the procurement shall be exempt from section 304B of this  
17          title. Price analysis under this section shall be conducted  
18          by developing or obtaining from the offeror or contractor,  
19          or from another source or sources, in accordance with stand-  
20          ards and procedures set forth in Federal Acquisition Regu-  
21          lations, information on prices at which the same or similar  
22          items have been sold in the commercial market that is ade-  
23          quate for evaluating the reasonableness of the price of the  
24          contract.

1       “(c) *AUTHORITY TO REQUEST COST OR PRICING DATA*  
2 *WHEN PRICE REASONABLENESS CANNOT BE DETER-*  
3 *MINED.*—In any case in which a contracting officer is un-  
4 able to determine under subsection (b) that a price is rea-  
5 sonable, the contracting officer, with the prior approval of  
6 the head of the procuring activity, may require cost or pric-  
7 ing data under section 304B.

8       “(d) *RIGHT TO AUDIT.*—(1) An executive agency is  
9 authorized to audit all documentation provided by an  
10 offeror under subsection (b) or (c) and all books and records  
11 of the offeror directly relating to such documentation, except  
12 that, if the offeror has made no representation as to the  
13 completeness of the documentation supplied, the executive  
14 agency is not authorized to audit for completeness.

15       “(2) The authority under this subsection shall expire—

16               “(A) one year after the date of commencement of  
17 performance of the contract, or one year after the date  
18 of commencement of performance of the modification  
19 of the contract, with respect to which the information  
20 was provided; or

21               “(B) on such other date agreed upon by the par-  
22 ties at the time of contract award or contract  
23 definitization.

24       “(e) *LIMITATIONS ON REQUESTS FOR DATA.*—The  
25 Federal Acquisition Regulation shall establish reasonable

1 *limitations on requests under this section for sales data re-*  
2 *lating to commercial items.*

3       “(f) *FORM OF INFORMATION.*—*In conducting a price*  
4 *analysis, or in requiring any additional information from*  
5 *an offeror, a contracting officer may request only that infor-*  
6 *mation from an offeror that is in the form regularly main-*  
7 *tained by the offeror in commercial operations, adequate*  
8 *to demonstrate the market price of the item or items, or*  
9 *otherwise needed to establish a fair and reasonable price.*

10       “(g) *CONFIDENTIALITY.*—*All documentation received*  
11 *from an offeror, if not otherwise in the public domain and*  
12 *if requested by the offeror and marked as proprietary, shall*  
13 *be treated by the Government as confidential and exempt*  
14 *from disclosure to the extent permitted by section 552 of*  
15 *title 5.”.*

16       “(b) *CROSS REFERENCE.*—*Section 304B of the Federal*  
17 *Property and Administrative Services Act of 1949, as added*  
18 *by section 1251, is amended by adding at the end the follow-*  
19 *ing new subsection:*

20       “(h) *EXCEPTIONS REGARDING COMMERCIAL ITEMS.*—  
21 *For provisions relating to exceptions for procurements of*  
22 *commercial items, see section 314B of this title.”.*

1 **SEC. 7204. PRINCIPLE OF CONSTRUCTION WITH FUTURE**  
2 **LAWS.**

3 *Title III of the Federal Property and Administrative*  
4 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*  
5 *by section 7203, is further amended by adding after section*  
6 *314B the following new section:*

7 **“SEC. 314C. PRINCIPLE OF CONSTRUCTION WITH FUTURE**  
8 **LAWS.**

9 *“A provision of law enacted after the date of the enact-*  
10 *ment of the Federal Acquisition Improvement Act of 1994*  
11 *may not be construed as applicable to purchases of commer-*  
12 *cial items by an executive agency unless that provision of*  
13 *law specifically refers to this section and specifically states*  
14 *that such provision of law modifies or supersedes sections*  
15 *314 through 314D of this title.”*

16 **SEC. 7205. INAPPLICABILITY OF CERTAIN PROVISIONS OF**  
17 **LAW.**

18 *Title III of the Federal Property and Administrative*  
19 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*  
20 *by section 7204, is further amended by adding after section*  
21 *314C the following new section:*

22 **“SEC. 314D. INAPPLICABILITY OF CERTAIN PROVISIONS OF**  
23 **LAW.**

24 *“(a) PROVISIONS INAPPLICABLE TO PRIME CONTRAC-*  
25 *TORS.—Procurements of commercial items shall not be sub-*

1 *ject to the following provisions of law (or regulations pre-*  
2 *scribed under such provisions):*

3           “(1) *Section 303G of this Act (relating to prohi-*  
4 *bition on limitation of subcontractor direct sales).*

5           “(2) *Section 304(a) of this Act (relating to pro-*  
6 *hibition on contingent fees).*

7           “(3) *Section 26 of the Office of Federal Procure-*  
8 *ment Policy Act (41 U.S.C. 422) (relating to cost ac-*  
9 *counting standards board).*

10           “(4) *Section 27(e) of the Office of Federal Pro-*  
11 *curement Policy Act (41 U.S.C. 423(e)) (relating to*  
12 *procurement integrity).*

13           “(5) *The Drug-Free Workplace Act of 1988 (sub-*  
14 *title D of title V of Public Law 100–690; 41 U.S.C.*  
15 *701 et seq.).*

16           “(b) *PROVISIONS INAPPLICABLE TO SUBCONTRACTORS*  
17 *AND OTHER ENTITIES.—*

18           “(1) *LAWS INAPPLICABLE.—Each provision of*  
19 *law listed under subsection (a) (and regulations pre-*  
20 *scribed under each such provision) shall not apply to*  
21 *any entity described in paragraph (2).*

22           “(2) *COVERED ENTITIES.—Paragraph (1) ap-*  
23 *plies to each of the following:*

24           “(A) *Any division, subsidiary, or affiliate*  
25 *of a prime contractor (other than the division,*

1           *subsidiary, or affiliate that is contracting with*  
2           *the Government under the prime contract) or of*  
3           *a subcontractor of a prime contractor, if such di-*  
4           *vision, subsidiary, or affiliate is furnishing a*  
5           *commercial item to the prime contractor or sub-*  
6           *contractor for purposes of carrying out the prime*  
7           *contract or subcontract.*

8           “(B) Any subcontractor or supplier of a  
9           prime contractor, if the subcontractor or supplier  
10          is furnishing a commercial item to the prime  
11          contractor for purposes of carrying out the prime  
12          contract.

13   **SEC. 7206. CONFORMING AMENDMENTS RELATING TO INAP-**  
14                            **PLICABILITY OF CERTAIN PROVISIONS OF**  
15                            **LAW.**

16          (a) *INAPPLICABILITY OF PROHIBITION ON LIMITING*  
17          *SUBCONTRACTOR DIRECT SALES TO THE UNITED*  
18          *STATES.*—Section 303G of the Federal Property and Ad-  
19          ministrative Services Act of 1949 (41 U.S.C. 253g), as  
20          amended by section 4042(a), is further amended by adding  
21          at the end the following new subsection:

22          “(d) An agreement between the contractor in a con-  
23          tract for the acquisition of commercial items and a sub-  
24          contractor under such contract that restricts sales by such  
25          subcontractor directly to persons other than the contractor

1 *may not be considered to unreasonably restrict sales by that*  
 2 *subcontractor to the United States in violation of the provi-*  
 3 *sion included in such contract pursuant to subsection (a)*  
 4 *if the agreement does not result in the Federal Government*  
 5 *being treated differently with regard to the restriction than*  
 6 *any other prospective purchaser of such commercial items*  
 7 *from that subcontractor.”.*

8 (b) *INAPPLICABILITY OF REQUIREMENT FOR CON-*  
 9 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section  
 10 *304(a) of the Federal Property and Administrative Services*  
 11 *Act of 1949 (41 U.S.C. 254(a)), as amended by section*  
 12 *4042(b), is further amended by inserting before the period*  
 13 *at the end of the sentence added by section 4042(b) the fol-*  
 14 *lowing: “or to a contract for the acquisition of commercial*  
 15 *items”.*

## 16 ***Subtitle D—Acquisitions Generally***

### 17 ***SEC. 7301. CONFORMING AMENDMENT RELATING TO INAP-***

#### 18 ***PLICABILITY OF CERTAIN PROVISIONS OF***

#### 19 ***LAW.***

20 (a) *COST ACCOUNTING STANDARDS BOARD.*—Section  
 21 *26(f) of the Office of Federal Procurement Policy Act (41*  
 22 *U.S.C. 422) is amended in paragraph (2) by striking out*  
 23 *“where the price negotiated” and all that follows through*  
 24 *“(B)” and inserting in lieu thereof “(A) for the procurement*

1 *of commercial items, or (B) for which the price negotiated*  
2 *is based on”.*

3 (b) *CERTIFICATION REQUIREMENTS.*—Subsection  
4 (e)(7)(A) of section 27 of the Office of Federal Procurement  
5 Policy Act (41 U.S.C. 423(e)(7)(A)), as amended by section  
6 4051, is further amended by inserting before the period at  
7 the end the following: “, for the procurement of goods and  
8 services other than commercial items”.

9 (c) *DRUG-FREE WORKPLACE ACT OF 1988.*—Section  
10 5152 of the Drug-Free Workplace Act of 1988 (subtitle D  
11 of title V of Public Law 100–690; 41 U.S.C. 701 et seq.),  
12 as amended by section 4054, is further amended by insert-  
13 ing after the matter inserted by such section 4057 the follow-  
14 ing: “, other than a contract for the procurement of commer-  
15 cial items as defined in section 4 of the Office of Federal  
16 Procurement Policy Act (41 U.S.C. 403)),”.

17 **SEC. 7302. FLEXIBLE DEADLINES FOR SUBMISSION OF OF-**  
18 **FERS OF COMMERCIAL ITEMS.**

19 Section 18(a) of the Office of Federal Procurement Pol-  
20 icy Act (41 U.S.C. 416(a)) is amended by adding at the  
21 end the following new paragraph:

22 “(4) The Administrator shall prescribe regulations de-  
23 fining limited circumstances in which flexible deadlines can  
24 be used under paragraph (3) for the submission of bids or  
25 proposals for the procurement of commercial items.”.

1 **SEC. 7303. ADDITIONAL RESPONSIBILITIES FOR ADVOCATES FOR COMPETITION.**  
2

3 (a) *RESPONSIBILITIES OF THE ADVOCATE FOR COMPETITION.*—Section 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(c)) is amended to read as  
4 follows:  
5

6  
7 “(c) The advocate for competition for each procuring  
8 activity shall be responsible for promoting full and open  
9 competition, promoting the acquisition of commercial  
10 items, and challenging barriers to such acquisition, including such barriers as unnecessarily restrictive statements of  
11 need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.”  
12

13  
14 (b) *REPEAL OF SUPERSEDED PROVISION.*—Section 28  
15 of such Act (41 U.S.C. 424) is repealed.

16 **SEC. 7304. PROVISIONS NOT AFFECTED.**

17 Nothing in this title shall be construed as modifying  
18 or superseding, or as intended to impair or restrict, authorities or responsibilities under—  
19

20 (1) section 315 of the Federal Property and Administrative Services Act of 1949 or section 2323 of  
21 title 10, United States Code;  
22

23 (2) section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759),  
24 popularly referred to as the “Brooks Automatic Data  
25 Processing Act”;  
26





1       (c) *TEST REQUIREMENTS.*—Tests conducted under  
2 subsection (a)—

3           (1) shall be developed and structured by the Ad-  
4 ministrator or by the agency senior procurement ex-  
5 ecutives designated pursuant to section 16(3) of the  
6 Office of Federal Procurement Policy Act in close co-  
7 ordination with the Administrator;

8           (2) shall be for a period of not greater than 4  
9 years;

10          (3) shall be limited to specific programs of agen-  
11 cies or specific acquisitions;

12          (4) may not include any test with a total esti-  
13 mated life-cycle cost to the Federal Government great-  
14 er than \$100,000,000;

15          (5) shall include—

16           (A) a test by the National Aeronautics and  
17 Space Administration of simplified procurement  
18 procedures for acquisitions with an estimated  
19 annual total obligation of funds of \$500,000 or  
20 less;

21           (B) a test by the General Services Adminis-  
22 tration of expedited methods for procuring auto-  
23 matic data processing equipment commodities;  
24 and

1           (C) a test by at least one agency of stream-  
2           lined procedures for competition among inter-  
3           ested sources participating in the tailoring of a  
4           solicitation for the purchase of commercial prod-  
5           ucts; and

6           (6) shall not include any procurement the cost of  
7           which is expected to exceed \$5,000,000 (including op-  
8           tions).

9           (d) *LIMITATION ON TOTAL VALUE OF CONTRACTS*  
10          *UNDER PROGRAM.*—

11           (1) *LIMITATION.*—The Administrator shall en-  
12           sure that the total amount obligated under contracts  
13           awarded pursuant to the program under this section  
14           does not exceed \$600,000,000.

15           (2) *MONITORING.*—The Administrator shall  
16           monitor the value of contracts awarded pursuant to  
17           the program under this section.

18           (3) *PROHIBITION ON AWARDS IN EXCESS OF*  
19           *LIMIT.*—No contract may be awarded under the pro-  
20           gram under this section if the award of the contract  
21           would result in obligation of more than \$600,000,000  
22           under contracts under this section.

23           (e) *PROCEDURES AUTHORIZED.*—Tests conducted  
24           under this section may include any of the following proce-  
25           dures:

1           (1) *Publication of agency needs before drafting of*  
2           *a solicitation.*

3           (2) *Screening of sources and competition among*  
4           *capable vendors.*

5           (3) *Issuance of draft solicitations for comment.*

6           (4) *Streamlined solicitations, with a minimized*  
7           *number of evaluation factors and information re-*  
8           *quired from vendors, abbreviated periods for submis-*  
9           *sion of offers, and page limitations on offers.*

10          (5) *Limitation of source selection factors to—*

11                 (A) *cost to the Federal Government;*

12                 (B) *past experience; and*

13                 (C) *quality of the contents of the offer.*

14          (6) *Evaluation of proposals by small teams of*  
15          *highly qualified people, limited to 30 days.*

16          (7) *Competition among sources of preevaluated*  
17          *products.*

18          (8) *Alternative notice and publication require-*  
19          *ments.*

20          (9) *A process in which—*

21                 (A) *the competitive process is initiated by a*  
22                 *notice in the Commerce Business Daily synop-*  
23                 *sizing the needs of the executive agency conduct-*  
24                 *ing the test, in functional and performance*

1           *terms, with other specifications provided for*  
2           *guidance only;*

3           *(B) the notice invites interested sources to*  
4           *submit information or samples showing their*  
5           *product's suitability for those needs (with price*  
6           *quotations) or, if appropriate, showing the*  
7           *sources' technical capability, past performance,*  
8           *product supportability, or other qualifications*  
9           *(with appropriate consideration to rates and*  
10          *other cost-related factors);*

11          *(C) contracting officials develop a request*  
12          *for proposals (including appropriate specifica-*  
13          *tions and evaluation criteria) after reviewing the*  
14          *submittals made by interested sources and, if the*  
15          *officials determine necessary, after consultation*  
16          *with those sources; and*

17          *(D) the contract is awarded after a stream-*  
18          *lined competition limited to all sources that*  
19          *timely provided product information in response*  
20          *to the notice or, if appropriate, to those sources*  
21          *determined most capable based on those quali-*  
22          *fication-based factors included in an invitation*  
23          *to submit information pursuant to subparagraph*  
24          *(B).*

1       (f) *TEST PLAN.*—Not later than 60 days before imple-  
2       menting any test program under this section, the Adminis-  
3       trator shall—

4             (1) *provide a detailed test plan, including lists*  
5             *of any regulations that are to be waived, and any*  
6             *written determination under subsection (g)(1)(B) to*  
7             *the Committee on Government Operations of the*  
8             *House of Representatives and the Committee on Gov-*  
9             *ernmental Affairs of the Senate;*

10            (2) *provide a copy of the plan to the appropriate*  
11            *authorizing committees of the House of Representa-*  
12            *tives and the Senate; and*

13            (3) *publish the plan in the Federal Register and*  
14            *provide an opportunity for public comment.*

15       (g) *WAIVER OF PROCUREMENT REGULATIONS.*—

16            (1) *IN GENERAL.*—For purposes of a test con-  
17            ducted under subsection (a), the Administrator may  
18            waive—

19                (A) *any provision of the Federal Acquisi-*  
20                *tion Regulation that is not required by statute;*  
21                *and*

22                (B) *any provision of the Federal Acquisi-*  
23                *tion Regulation that is required by a provision*  
24                *of law described in paragraph (2), the waiver of*  
25                *which the Administrator determines in writing*

1           to be necessary to conduct any test of any of the  
2           9 procedures described in subsection (e).

3           (2) *PROVISIONS OF LAW DESCRIBED.*—The pro-  
4           visions of law referred to in paragraph (1) are the fol-  
5           lowing:

6                   (A) Section 2304 of title 10, United States  
7           Code.

8                   (B) Section 2305 of title 10, United States  
9           Code.

10                  (C) Section 2319 of title 10, United States  
11           Code.

12                  (D) Section 3709 of the Revised Statutes  
13           (41 U.S.C. 5).

14                  (E) Section 3710 of the Revised Statutes  
15           (41 U.S.C. 8).

16                  (F) Section 3735 of the Revised Statutes (41  
17           U.S.C. 13).

18                  (G) Subsections (e), (f), and (g) of section  
19           8 of the Small Business Act (15 U.S.C. 637).

20                  (H) Section 310 of the Federal Property  
21           and Administrative Services Act of 1949 (41  
22           U.S.C. 260).

23                  (I) Section 303 of the Federal Property and  
24           Administrative Services Act of 1949 (41 U.S.C.  
25           253).

1           (J) Section 303A of the Federal Property  
2           and Administrative Services Act of 1949 (41  
3           U.S.C. 253a).

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

7           (L) Section 303C of the Federal Property  
8           and Administrative Services Act of 1949 (41  
9           U.S.C. 253c).

10          (M) Section 4(6) of the Office of Federal  
11          Procurement Policy Act (41 U.S.C. 403(6)).

12          (N) Section 18 of the Office of Federal Pro-  
13          curement Policy Act (41 U.S.C. 416).

14          (3) PROPOSAL FOR ADDITIONAL WAIVER.—If the  
15          Administrator determines that the conduct of a test  
16          requires the waiver of a law not listed in paragraph  
17          (2) or requires approval of an estimated dollar  
18          amount not permitted under subsection (c)(4), the Ad-  
19          ministrator may propose legislation to authorize the  
20          waiver or grant the approval. Before proposing such  
21          legislation, the Administrator may provide and pub-  
22          lish a test plan as described in subsection (f). If Con-  
23          gress does not authorize the waiver or grant the ap-  
24          proval within 120 days after the date of receipt of the  
25          proposal, the proposal shall be deemed to be with-

1       *drawn. A proposal not approved within such 120*  
2       *days may be resubmitted to Congress under this para-*  
3       *graph at any time.*

4       *(h) REPORTS AND REVIEWS.—*

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

8             *(2) COMPTROLLER GENERAL.—The Comptroller*  
9       *General of the United States shall review each test*  
10       *conducted under subsection (a) and report to the Con-*  
11       *gress on each test and shall report annually to the*  
12       *Congress on the conduct of and results of all tests con-*  
13       *ducted 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, 1998. Contracts*  
17       *entered into before October 1, 1998, pursuant to a test shall*  
18       *remain in effect, notwithstanding the expiration of the au-*  
19       *thority to conduct the test under this section.*

20       *(j) FEDERAL AVIATION ADMINISTRATION ACQUISITION*  
21       *PILOT PROGRAM.—(1) The Administrator shall delegate to*  
22       *the Secretary of Transportation authority to conduct a test*  
23       *of alternative and innovative procurement procedures in*  
24       *carrying out acquisitions for one of the modernization pro-*

1 *grams under the Airway Capital Investment Plan prepared*  
2 *pursuant to section 44501(b) of title 49, United States Code.*

3 *(2) The authority delegated under paragraph (1) shall*  
4 *include authority for the Secretary of Transportation—*

5 *(A) to apply any amendment or repeal of a pro-*  
6 *vision of law made in this Act to the pilot program*  
7 *before the effective date of such amendment or repeal;*  
8 *and*

9 *(B) to apply to a procurement of noncommercial*  
10 *items under such program—*

11 *(i) any authority provided in this Act (or*  
12 *in an amendment made by a provision of this*  
13 *Act) to waive a provision of law in the case of*  
14 *commercial items, and*

15 *(ii) any exception applicable under this Act*  
16 *(or an amendment made by a provision of this*  
17 *Act) in the case of commercial items,*

18 *before the effective date of such provision (or amend-*  
19 *ment) to the extent that the Secretary determines nec-*  
20 *essary to test the application of such waiver or excep-*  
21 *tion to procurements of noncommercial items.*

22 *(3) Paragraph (2) applies with respect to—*

23 *(A) a contract that is awarded or modified after*  
24 *the date occurring 45 days after the date of the enact-*  
25 *ment of this Act; and*

1           (B) a contract that is awarded before such date  
2           and is to be performed (or may be performed), in  
3           whole or in part, after such date.

4           (4) The Administrator may use the waiver authority  
5           provided under subsection (g) to waive the applicability of  
6           any provision referred to in paragraph (1) of that sub-  
7           section to the program designated by the Secretary of  
8           Transportation under this subsection.

9           (k) DEPARTMENT OF DEFENSE ACQUISITION PILOT  
10          PROGRAMS.—

11           (1) IN GENERAL.—The Secretary of Defense is  
12           authorized to designate the following defense acqui-  
13           sition programs for participation in the defense acqui-  
14           sition pilot program authorized by section 809 of the  
15           National Defense Authorization Act for Fiscal Year  
16           1991 (10 U.S.C. 2430 note):

17           (A) FIRE SUPPORT COMBINED ARMS TAC-  
18           TICAL TRAINER (FSCATT).—All contracts directly  
19           relating to the procurement of a training simula-  
20           tion system, including related hardware, soft-  
21           ware, and subsystems, to perform collective  
22           training of field artillery gunnery teams, with  
23           development of software as required to generate  
24           the training exercises.

1           (B) *JOINT DIRECT ATTACK MUNITION (JDAM*  
2 *1).*—*All contracts directly relating to the develop-*  
3 *ment and procurement of a strap-on guidance*  
4 *kit, using an inertially guided, Global Position-*  
5 *ing System updated guidance kit to enhance the*  
6 *delivery accuracy of 1000-pound and 2000-*  
7 *pound bombs in inventory.*

8           (C) *COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).*—

9                   (i) *All contracts related to acquisition*  
10 *or upgrading of commercial-derivative air-*  
11 *craft for use in meeting future Air Force*  
12 *airlift, tanker, and airborne warning and*  
13 *control system requirements.*

14                   (ii) *For purposes of this subparagraph,*  
15 *the term “commercial-derivative aircraft”*  
16 *means any of the following:*

17                           (I) *Any aircraft that is of a type*  
18 *customarily used in the course of nor-*  
19 *mal business operations for other than*  
20 *Federal Government purposes, that has*  
21 *been issued a type certificate by the*  
22 *Administrator of the Federal Aviation*  
23 *Administration, and that has been sold*  
24 *or leased for use in the commercial*  
25 *marketplace or that has been offered for*

1                   *sale or lease for use in the commercial*  
2                   *marketplace.*

3                   (II) *Any aircraft that, but for*  
4                   *modifications of a type customarily*  
5                   *available in the commercial market-*  
6                   *place, or minor modifications made to*  
7                   *meet Federal Government require-*  
8                   *ments, would satisfy the criteria in*  
9                   *subclause (I).*

10                  (D) *COMMERCIAL-DERIVATIVE ENGINE.—*  
11                  *The commercial derivative engine program with*  
12                  *respect to all contracts directly related to the ac-*  
13                  *quisition of (i) commercially derived engines (in-*  
14                  *cluding spare engines), logistics support equip-*  
15                  *ment, technical orders, management data, and*  
16                  *initial spare parts for use in supporting the pur-*  
17                  *chase of commercial-derivative aircraft to meet*  
18                  *future Air Force airlift and tanker requirements,*  
19                  *including engine replacement and upgrades.*

20                  (2) *CONDUCT OF DEFENSE ACQUISITION PRO-*  
21                  *GRAMS.—In the case of each defense acquisition pro-*  
22                  *gram designated under paragraph (1) for participa-*  
23                  *tion in the Defense Acquisition Pilot Program, the*  
24                  *Secretary of Defense shall—*

1           (A) develop guidelines and procedures for  
2 carrying out the program and the criteria to be  
3 used in measuring the success of the program;

4           (B) evaluate the potential costs and benefits  
5 which may be derived from the innovative pro-  
6 curement methods and procedures tested under  
7 the program; and

8           (C) develop the methods to be used to ana-  
9 lyze the results of the program.

10          (3) *SPECIAL AUTHORITY.*—The authority dele-  
11 gated under paragraph (1) may include authority for  
12 the Secretary of Defense—

13           (A) to apply any amendment or repeal of a  
14 provision of law made in this Act to the pilot  
15 programs before the effective date of such amend-  
16 ment or repeal; and

17           (B) to apply to a procurement of non-  
18 commercial items under such programs—

19                   (i) any authority provided in such Act  
20                   (or in an amendment made by a provision  
21                   of such Act) to waive a provision of law in  
22                   the case of commercial items, and

23                   (ii) any exception applicable under  
24                   such Act (or an amendment made by a pro-

1           *vision of such Act) in the case of commer-*  
2           *cial items,*  
3           *before the effective date of such provision (or*  
4           *amendment) to the extent that the Secretary de-*  
5           *termines necessary to test the application of such*  
6           *waiver or exception to procurements of non-*  
7           *commercial items.*

8           (4) *APPLICABILITY.—(A) Paragraph (3) applies*  
9           *with respect to—*

10           (i) *a contract that is awarded or modified*  
11           *during the period described in subparagraph*  
12           *(B); and*

13           (ii) *a contract that is awarded before the be-*  
14           *ginning of such period and is to be performed*  
15           *(or may be performed), in whole or in part, dur-*  
16           *ing such period.*

17           (B) *The period referred to in subparagraph (A)*  
18           *is the period that begins 45 days after the date of the*  
19           *enactment of this Act and ends on September 30,*  
20           *1998.*

21   **SEC. 8002. STUDY OF PARTICIPATION BY CERTAIN SMALL**  
22                           **BUSINESSES IN FEDERAL PROCUREMENT.**

23           (a) *STUDY.—The Administrator for Federal Procure-*  
24           *ment Policy shall conduct a study of—*

1           (1) *the degree of participation by small busi-*  
2           *nesses owned and controlled by socially and economi-*  
3           *cally disadvantaged individuals in procurements con-*  
4           *ducted by executive agencies, other than agencies in*  
5           *the Department of Defense; and*

6           (2) *the extent of compliance by those executive*  
7           *agencies with the goals for participation by such busi-*  
8           *nesses required by Office of Federal Procurement Pol-*  
9           *icy policy letter 91-1, relating to Government-wide*  
10          *small business and small disadvantaged business*  
11          *goals for procurement contracts.*

12          (b) *REPORT.*—*Not later than 6 months after the date*  
13          *of the enactment of this Act, the Administrator for Federal*  
14          *Procurement Policy shall submit a report on the study re-*  
15          *quired under subsection (a) to the Committee on Govern-*  
16          *ment Operations and the Committee on Small Business of*  
17          *the House of Representatives, and to the Committee on Gov-*  
18          *ernmental Affairs and the Committee on Small Business*  
19          *of the Senate. The report shall include recommendations to*  
20          *facilitate the provision of authority to executive agencies,*  
21          *other than agencies in the Department of Defense, to con-*  
22          *duct procurement set asides for small businesses owned and*  
23          *controlled by socially and economically disadvantaged indi-*  
24          *viduals, and on improved outreach programs to increase the*

1 *participation by such businesses in procurements conducted*  
2 *by those executive agencies.*

3 *(b) EXTENSION OF DEFENSE CONTRACT GOAL TO*  
4 *COAST GUARD AND NASA.—Section 2323 of title 10, Unit-*  
5 *ed States Code, is amended to read as follows:*

6 **“§2323. Contract goal for small disadvantaged busi-**  
7 **nesses and certain institutions of higher**  
8 **education**

9 *“(a) GOAL.—(1) Except as provided in subsection (d),*  
10 *a goal of 5 percent of the amount described in subsection*  
11 *(b) shall be the objective of the Department of Defense, the*  
12 *Coast Guard, and the National Aeronautics and Space Ad-*  
13 *ministration in each of fiscal years 1987 through 2000 for*  
14 *the total combined amount obligated for contracts and sub-*  
15 *contracts entered into with—*

16 *“(A) small business concerns, including mass*  
17 *media and advertising firms, owned and controlled by*  
18 *socially and economically disadvantaged individuals*  
19 *(as such term is used in section 8(d) of the Small*  
20 *Business Act (15 U.S.C. 637(d)) and regulations is-*  
21 *ssued under that section), the majority of the earnings*  
22 *of which directly accrue to such individuals;*

23 *“(B) historically Black colleges and universities;*  
24 *and*

1           “(C) *minority institutions (as defined in para-*  
2           *graphs (3), (4), and (5) of section 312(b) of the High-*  
3           *er Education Act of 1965 (20 U.S.C. 1058)), includ-*  
4           *ing any nonprofit research institution that was an*  
5           *integral part of a historically Black college or univer-*  
6           *sity before November 14, 1986.*

7           “(2) *The head of the agency shall establish a specific*  
8           *goal within the overall 5 percent goal for the award of*  
9           *prime contracts and subcontracts to historically Black col-*  
10          *leges and universities and minority institutions in order*  
11          *to increase the participation of such colleges and univer-*  
12          *sities in the program provided for by this section.*

13          “(3) *The Federal Acquisition Regulation (issued under*  
14          *section 25(c) of the Office of Federal Procurement Policy*  
15          *Act (41 U.S.C. 421(c)) shall provide procedures or guide-*  
16          *lines for contracting officers to set goals which agency prime*  
17          *contractors that are required to submit subcontracting*  
18          *plans under section 8(d)(4)(B) of the Small Business Act*  
19          *(15 U.S.C. 637(d)(4)(B)) in furtherance of the agency’s pro-*  
20          *gram to meet the 5 percent goal specified in paragraph (1)*  
21          *should meet in awarding subcontracts, including sub-*  
22          *contracts to minority-owned media, to entities described in*  
23          *that paragraph.*

24          “(b) *AMOUNT.—*

1           “(1) *DEPARTMENT OF DEFENSE.*—*With respect*  
2 *to the Department of Defense, the requirements of sub-*  
3 *section (a) for any fiscal year apply to the combined*  
4 *total of the following amounts:*

5           “(A) *Funds obligated for contracts entered*  
6 *into with the Department of Defense for such fis-*  
7 *cal year for procurement.*

8           “(B) *Funds obligated for contracts entered*  
9 *into with the Department of Defense for such fis-*  
10 *cal year for research, development, test, and eval-*  
11 *uation.*

12           “(C) *Funds obligated for contracts entered*  
13 *into with the Department of Defense for such fis-*  
14 *cal year for military construction.*

15           “(D) *Funds obligated for contracts entered*  
16 *into with the Department of Defense for oper-*  
17 *ation and maintenance.*

18           “(2) *COAST GUARD.*—*With respect to the Coast*  
19 *Guard, the requirements of subsection (a) for any fis-*  
20 *cal year apply to the total value of all prime contract*  
21 *and subcontract awards entered into by the Coast*  
22 *Guard for such fiscal year.*

23           “(3) *NATIONAL AERONAUTICS AND SPACE ADMIN-*  
24 *ISTRATION.*—*With respect to the National Aeronautics*  
25 *and Space Administration, the requirements of sub-*

1        *section (a) for any fiscal year apply to the total value*  
2        *of all prime contract and subcontract awards entered*  
3        *into by the National Aeronautics and Space Adminis-*  
4        *tration for such fiscal year.*

5        *“(c) TYPES OF ASSISTANCE.—(1) To attain the goal*  
6        *specified in subsection (a)(1), the head of the agency shall*  
7        *provide technical assistance to the entities referred to in*  
8        *that subsection and, in the case of historically Black colleges*  
9        *and universities and minority institutions, shall also pro-*  
10       *vide infrastructure assistance.*

11       *“(2) Technical assistance provided under this section*  
12       *shall include information about the program, advice about*  
13       *agency procurement procedures, instruction in preparation*  
14       *of proposals, and other such assistance as the agency head*  
15       *considers appropriate. If the resources of the agency are in-*  
16       *adequate to provide such assistance, the agency head may*  
17       *enter into contracts with minority private sector entities*  
18       *with experience and expertise in the design, development,*  
19       *and delivery of technical assistance services to eligible indi-*  
20       *viduals, business firms and institutions, acquisition agen-*  
21       *cies, and prime contractors. Agency contracts with such en-*  
22       *tities shall be awarded annually, based upon, among other*  
23       *things, the number of minority small business concerns, his-*  
24       *torically Black colleges and universities, and minority in-*  
25       *stitutions that each such entity brings into the program.*

1       “(3) Infrastructure assistance provided by the Depart-  
2       ment of Defense under this section to historically Black col-  
3       leges and universities and to minority institutions may in-  
4       clude programs to do the following:

5               “(A) Establish and enhance undergraduate,  
6       graduate, and doctoral programs in scientific dis-  
7       ciplines critical to the national security functions of  
8       the Department of Defense.

9               “(B) Make Department of Defense personnel  
10       available to advise and assist faculty at such colleges  
11       and universities in the performance of defense re-  
12       search and in scientific disciplines critical to the na-  
13       tional security functions of the Department of De-  
14       fense.

15              “(C) Establish partnerships between defense lab-  
16       oratories and historically Black colleges and univer-  
17       sities and minority institutions for the purpose of  
18       training students in scientific disciplines critical to  
19       the national security functions of the Department of  
20       Defense.

21              “(D) Award scholarships, fellowships, and the es-  
22       tablishment of cooperative work-education programs  
23       in scientific disciplines critical to the national secu-  
24       rity functions of the Department of Defense.

1           “(E) Attract and retain faculty involved in sci-  
2           entific disciplines critical to the national security  
3           functions of the Department of Defense.

4           “(F) Equip and renovate laboratories for the  
5           performance of defense research.

6           “(G) Expand and equip Reserve Officer Train-  
7           ing Corps activities devoted to scientific disciplines  
8           critical to the national security functions of the De-  
9           partment of Defense.

10           “(H) Provide other assistance as the Secretary  
11           determines appropriate to strengthen scientific dis-  
12           ciplines critical to the national security functions of  
13           the Department of Defense or the college infrastruc-  
14           ture to support the performance of defense research.

15           “(4) The head of the agency shall, to the maximum  
16           extent practical, carry out programs under this section at  
17           colleges, universities, and institutions that agree to bear a  
18           substantial portion of the cost associated with the programs.

19           “(d) APPLICABILITY.—Subsection (a) does not apply to  
20           the Department of Defense—

21           “(1) to the extent to which the Secretary of De-  
22           fense determines that compelling national security  
23           considerations require otherwise; and

24           “(2) if the Secretary notifies Congress of such de-  
25           termination and the reasons for such determination.

1           “(e) *COMPETITIVE PROCEDURES AND ADVANCE PAY-*  
2 *MENTS.*—*To attain the goal of subsection (a):*

3           “(1)(A) *The head of the agency shall—*

4                   “(i) *ensure that substantial progress is*  
5 *made in increasing awards of agency contracts*  
6 *to entities described in subsection (a)(1);*

7                   “(ii) *exercise his utmost authority, resource-*  
8 *fulness, and diligence;*

9                   “(iii) *in the case of the Department of De-*  
10 *fense, actively monitor and assess the progress of*  
11 *the military departments, Defense Agencies, and*  
12 *prime contractors of the Department of Defense*  
13 *in attaining such goal; and*

14                   “(iv) *in the case of the Coast Guard and the*  
15 *National Aeronautics and Space Administration,*  
16 *actively monitor and assess the progress of the*  
17 *prime contractors of the agency in attaining*  
18 *such goal.*

19           “(B) *In making the assessment under clauses*  
20 *(iii) and (iv) of subparagraph (A), the agency head*  
21 *shall evaluate the extent to which use of the authority*  
22 *provided in paragraphs (2) and (3) and compliance*  
23 *with the requirement in paragraph (4) is effective for*  
24 *facilitating the attainment of the goal.*

1           “(2) To the extent practicable and when nec-  
2           essary to facilitate achievement of the 5 percent goal  
3           described in subsection (a), the agency head shall  
4           make advance payments under section 2307 of this  
5           title to contractors described in subsection (a). The  
6           Federal Acquisition Regulation shall provide guid-  
7           ance to contracting officers for making advance pay-  
8           ments to entities described in subsection (a)(1) under  
9           such section.

10           “(3) To the extent practicable and when nec-  
11           essary to facilitate achievement of the 5 percent goal  
12           described in subsection (a), the agency head may  
13           enter into contracts using less than full and open  
14           competitive procedures (including awards under sec-  
15           tion 8(a) of the Small Business Act) and partial set  
16           asides for entities described in subsection (a)(1), but  
17           shall pay a price not exceeding fair market cost by  
18           more than 10 percent in payment per contract to con-  
19           tractors or subcontractors described in subsection (a).  
20           The agency head shall adjust the percentage specified  
21           in the preceding sentence for any industry category if  
22           available information clearly indicates that  
23           nondisadvantaged small business concerns in such in-  
24           dustry category are generally being denied a reason-  
25           able opportunity to compete for contracts because of

1       *the use of that percentage in the application of this*  
2       *paragraph.*

3               “(4) *To the extent practicable, the agency head*  
4       *shall maximize the number of minority small business*  
5       *concerns, historically Black colleges and universities,*  
6       *and minority institutions participating in the pro-*  
7       *gram.*

8               “(5) *The agency head shall prescribe regulations*  
9       *which provide for the following:*

10               “(A) *Procedures or guidance for contracting*  
11       *officers to provide incentives for prime contrac-*  
12       *tors referred to in subsection (a)(3) to increase*  
13       *subcontractor awards to entities described in*  
14       *subsection (a)(1).*

15               “(B) *A requirement that contracting officers*  
16       *emphasize the award of contracts to entities de-*  
17       *scribed in subsection (a)(1) in all industry cat-*  
18       *egories, including those categories in which such*  
19       *entities have not traditionally dominated.*

20               “(C) *Guidance to agency personnel on the*  
21       *relationship among the following programs:*

22                       “(i) *The program implementing this*  
23       *section.*

1                   “(ii) The program established under  
2                   section 8(a) of the Small Business Act (15  
3                   U.S.C. 637(a)).

4                   “(iii) The small business set-aside pro-  
5                   gram established under section 15(a) of the  
6                   Small Business Act (15 U.S.C. 644(a)).

7                   “(D) With respect to an agency procure-  
8                   ment which is reasonably likely to be set aside  
9                   for entities described in subsection (a)(1), a re-  
10                  quirement that (to the maximum extent prac-  
11                  ticable) the procurement be designated as such a  
12                  set-aside before the solicitation for the procure-  
13                  ment is issued.

14                  “(E) Policies and procedures which, to the  
15                  maximum extent practicable, will ensure that  
16                  current levels in the number or dollar value of  
17                  contracts awarded under the program established  
18                  under section 8(a) of the Small Business Act (15  
19                  U.S.C. 637(a)) and under the small business set-  
20                  aside program established under section 15(a) of  
21                  the Small Business Act (15 U.S.C. 644(a)) are  
22                  maintained and that every effort is made to pro-  
23                  vide new opportunities for contract awards to el-  
24                  igible entities, in order to meet the goal of sub-  
25                  section (a).

1           “(F) Implementation of this section in a  
2           manner which will not alter the procurement  
3           process under the program established under sec-  
4           tion 8(a) of the Small Business Act (15 U.S.C.  
5           637(a)).

6           “(G) A requirement that one factor used in  
7           evaluating the performance of a contracting offi-  
8           cer be the ability of the officer to increase con-  
9           tract awards to entities described in subsection  
10          (a)(1).

11          “(H) Increased technical assistance to enti-  
12          ties described in subsection (a)(1).

13          “(f) PENALTIES AND REGULATIONS RELATING TO STA-  
14          TUS.—(1) Whoever for the purpose of securing a contract  
15          or subcontract under subsection (a) misrepresents the status  
16          of any concern or person as a small business concern owned  
17          and controlled by a minority (as described in subsection  
18          (a)), shall be punished by imprisonment for not more than  
19          one year, or a fine under title 18, or both.

20          “(2) The Federal Acquisition Regulation shall prohibit  
21          awarding a contract under this section to an entity de-  
22          scribed in subsection (a)(1) unless the entity agrees to com-  
23          ply with the requirements of section 15(o)(1) of the Small  
24          Business Act (15 U.S.C. 644(o)(1)).

1       “(g) *INDUSTRY CATEGORIES.*—(1) *To the maximum*  
2 *extent practicable, the head of the agency shall—*

3               “(A) *ensure that no particular industry category*  
4 *bears a disproportionate share of the contracts award-*  
5 *ed to attain the goal established by subsection (a);*  
6 *and*

7               “(B) *ensure that contracts awarded to attain the*  
8 *goal established by subsection (a) are made across the*  
9 *broadest possible range of industry categories.*

10       “(2) *Under procedures prescribed by the head of the*  
11 *agency, a person may request the Secretary to determine*  
12 *whether the use of small disadvantaged business set asides*  
13 *by a contracting activity of the agency has caused a par-*  
14 *ticular industry category to bear a disproportionate share*  
15 *of the contracts awarded to attain the goal established for*  
16 *that contracting activity for the purposes of this section.*  
17 *Upon making a determination that a particular industry*  
18 *category is bearing a disproportionate share, the agency*  
19 *head shall take appropriate actions to limit the contracting*  
20 *activity’s use of set asides in awarding contracts in that*  
21 *particular industry category.*

22       “(h) *COMPLIANCE WITH SUBCONTRACTING PLAN RE-*  
23 *QUIREMENTS.*—(1) *The Federal Acquisition Regulation*  
24 *shall contain regulations to ensure that potential contrac-*  
25 *tors submitting sealed bids or competitive proposals to the*

1 *agency for procurement contracts to be awarded under the*  
2 *program provided for by this section are complying with*  
3 *applicable subcontracting plan requirements of section 8(d)*  
4 *of the Small Business Act (15 U.S.C. 637(d)).*

5       “(2) *The regulations required by paragraph (1) shall*  
6 *ensure that, with respect to a sealed bid or competitive pro-*  
7 *posal for which the bidder or offeror is required to negotiate*  
8 *or submit a subcontracting plan under section 8(d) of the*  
9 *Small Business Act (15 U.S.C. 637(d)), the subcontracting*  
10 *plan shall be a factor in evaluating the bid or proposal.*

11       “(i) *ANNUAL REPORT.—(1) Not later than December*  
12 *15 of each year, the head of the agency shall submit to Con-*  
13 *gress a report on the progress of the agency toward attain-*  
14 *ing the goal of subsection (a) during the preceding fiscal*  
15 *year.*

16       “(2) *The report required under paragraph (1) shall in-*  
17 *clude the following:*

18               “(A) *A full explanation of any progress toward*  
19 *attaining the goal of subsection (a).*

20               “(B) *A plan to achieve the goal, if necessary.*

21       “(3) *The report required under paragraph (1) shall*  
22 *also include the following:*

23               “(A) *The aggregate differential between the fair*  
24 *market price of all contracts awarded pursuant to*  
25 *subsection (e)(3) and the estimated fair market price*

1       of all such contracts had such contracts been entered  
2       into using full and open competitive procedures.

3           “(B) An analysis of the impact that subsection  
4       (a) shall have on the ability of small business con-  
5       cerns not owned and controlled by socially and eco-  
6       nomically disadvantaged individuals to compete for  
7       contracts with the agency.

8           “(C) A description of the percentage of contracts  
9       (actions), the total dollar amount (size of action), and  
10      the number of different entities relative to the attain-  
11      ment of the goal of subsection (a), separately for  
12      Black Americans, Native Americans, Hispanic Amer-  
13      icans, Asian Pacific Americans, and other minorities.

14      “(j) DEFINITIONS.—In this section:

15           “(1) The term ‘agency’ means the Department of  
16      Defense, the Coast Guard, and the National Aero-  
17      nautics and Space Administration.

18           “(2) The term ‘head of an agency’ means the  
19      Secretary of Defense, the Secretary of Transportation,  
20      and the Administrator of the National Aeronautics  
21      and Space Administration.”.

22   **SEC. 8004. EDUCATION AND TRAINING.**

23      Section 6(d)(5) of the Office of Federal Procurement  
24   Policy Act (41 U.S.C. 405(d)(5)) is amended—

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

3           (2) by striking out the semicolon at the end of  
4           subparagraph (B) and inserting in lieu thereof “;  
5           and”; and

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

8                   “(C) establish policies and procedures for  
9                   the establishment and implementation of edu-  
10                  cation and training programs authorized by this  
11                  Act, including the establishment and implemen-  
12                  tation of training, in conjunction with the Gen-  
13                  eral Services Administration, for critical pro-  
14                  curement personnel designed to increase the par-  
15                  ticipation of small business concerns owned and  
16                  controlled by socially and economically dis-  
17                  advantaged individuals, women, and other mi-  
18                  norities in procurement activities conducted by  
19                  an executive agency.”.

20   **SEC. 8005. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**  
21                   **TELLECTUAL PROPERTY RIGHTS.**

22           Section 2386 of title 10, United States Code, is amend-  
23           ed by striking out paragraphs (3) and (4) and inserting  
24           in lieu thereof the following:

25                   “(3) Technical data and computer software.

1           “(4) Releases for past infringement of patents or  
2           copyrights or for unauthorized use of technical data  
3           or computer software.”.

4   **SEC. 8006. SENSE OF CONGRESS ON NEGOTIATED RULE-**  
5           **MAKING.**

6           (a) *FINDINGS.*—The Congress finds the following:

7               (1) *The use of negotiated rulemaking or similar*  
8               *policy discussion group techniques is an appropriate*  
9               *tool for—*

10                   (A) *fostering effective implementation of,*  
11                   *and compliance with, laws and regulations;*

12                   (B) *avoiding litigation; and*

13                   (C) *achieving more productive and equitable*  
14                   *relationships between the Federal Government*  
15                   *and the regulated segments of the private sector.*

16               (2) *The use of negotiated rulemaking or similar*  
17               *techniques in Federal procurement regulations could*  
18               *be appropriate given the extreme complexity and in-*  
19               *tricate interactions between buyer and seller in Fed-*  
20               *eral procurements.*

21           (b) *SENSE OF CONGRESS.*—It is the sense of Congress  
22           *that, in prescribing acquisition regulations, the Federal Ac-*  
23           *quisition Regulatory Council should consider using nego-*  
24           *tiated rulemaking procedures in accordance with sections*  
25           *561 through 570 of title 5, United States Code, or similar*

1 *techniques intended to achieve the benefits described in sub-*  
2 *section (a)(1).*

3 **SEC. 8007. VENDOR AND EMPLOYEE EXCELLENCE AWARDS.**

4 *Section 6(d) of the Office of Federal Procurement Pol-*  
5 *icy Act (41 U.S.C. 405(d)) is amended—*

6 *(1) by striking out the period at the end of para-*  
7 *graph (10) (as redesignated by section 4011(b)(2))*  
8 *and inserting in lieu thereof a semicolon; and*

9 *(2) by adding at the end the following new para-*  
10 *graphs:*

11 *“(11) providing for a Government-wide award to*  
12 *recognize and promote vendor excellence; and*

13 *“(12) providing for a Government-wide award to*  
14 *recognize and promote excellence in officers and em-*  
15 *ployees of the Federal Government serving in procure-*  
16 *ment-related positions.”.*

17 **SEC. 8008. CODIFICATION OF ACCOUNTING REQUIREMENT**

18 **FOR CONTRACTED ADVISORY AND ASSIST-**

19 **ANCE 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 and*  
24 *Budget shall establish the funding for consulting services*  
25 *for each department and agency as a separate object class*

1 *in each budget annually submitted to the Congress under*  
2 *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 tele-*  
14 *communications services (as defined in the Federal*  
15 *Information Resources Management Regulation pre-*  
16 *scribed by the Administrator of General Services) un-*  
17 *less such services are an integral part of a contract*  
18 *for the procurement of advisory and assistance serv-*  
19 *ices.*

20               “(ii) *Architectural and engineering services.*

21               “(iii) *Technical support of research and develop-*  
22 *ment activities.*

23               “(iv) *Research on basic mathematics or medical,*  
24 *biological, physical, social, psychological, or other*  
25 *phenomena.”.*

1       (b) *REPEAL OF SOURCE LAW.*—Section 512 of Public  
2 Law 102–394 (106 Stat. 1826) is repealed.

3       (c) *REPEAL OF SUPERSEDED PROVISIONS.*—

4           (1) *DOD SPECIFIC LAW.*—Section 2212 of title  
5 10, United States Code, is repealed.

6           (2) *GOVERNMENT-WIDE LAW.*—Section 1114 of  
7 title 31, United States Code, is repealed.

8           (3) *CLERICAL AMENDMENTS.*—The table of sec-  
9 tions at the beginning of chapter 131 of title 10, Unit-  
10 ed States Code, is amended by striking out the item  
11 relating to section 2212. The table of sections at the  
12 beginning of chapter 11 of title 31, United States  
13 Code, is amended by striking out the item relating to  
14 section 1114.

15 **SEC. 8009. TECHNICAL AND CLERICAL AMENDMENTS.**

16       (a) *TABLE OF CONTENTS AMENDMENTS.*—

17           (1) *OFFICE OF FEDERAL PROCUREMENT POLICY*  
18 *ACT.*—The first section of the Office of Federal Pro-  
19 curement Policy Act (41 U.S.C. 401 note) is amended  
20 to read as follows:

21 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

22       “(a) *SHORT TITLE.*—This Act may be cited as the ‘Of-  
23 fice of Federal Procurement Policy Act’.

24       “(b) *TABLE OF CONTENTS.*—The table of contents for  
25 this Act is as follows:

“Sec. 1.   Short title; table of contents.

- "Sec. 2. Declaration of policy.
- "Sec. 3. Findings and purpose.
- "Sec. 4. Definitions.
- "Sec. 4A. Simplified acquisition threshold.
- "Sec. 4B. Procedures applicable to purchases below micro-purchase threshold.
- "Sec. 5. Office of Federal Procurement Policy.
- "Sec. 6. Authority and functions of the Administrator.
- "Sec. 7. Administrative powers.
- "Sec. 8. Responsiveness to Congress.
- "Sec. 9. Effect on existing laws.
- "Sec. 10. Effect on existing regulations.
- "Sec. 11. Authorization of appropriations.
- "Sec. 12. Delegation.
- "Sec. 14. Access to information.
- "Sec. 15. Tests of innovative procurement methods and procedures.
- "Sec. 16. Executive agency responsibilities.
- "Sec. 18. Procurement notice.
- "Sec. 19. Record requirements.
- "Sec. 20. Advocates for competition.
- "Sec. 21. Rights in technical data.
- "Sec. 22. Publication of proposed regulations.
- "Sec. 23. Contracting functions performed by Federal personnel.
- "Sec. 24. Travel expenses of Government contractors.
- "Sec. 25. Federal Acquisition Regulatory Council.
- "Sec. 26. Cost Accounting Standards Board.
- "Sec. 27. Procurement integrity.
- "Sec. 28. Advocate for the Acquisition of Commercial Products.
- "Sec. 29. Nonstandard contract clauses.
- "Sec. 30. Federal acquisition computer network (FACNET).".

1           (2) *FEDERAL PROPERTY AND ADMINISTRATIVE*  
 2           *SERVICES ACT OF 1949.*—*The first section of the Fed-*  
 3           *eral Property and Administrative Services Act of*  
 4           *1949 (41 U.S.C. 471 et seq.) is amended to read as*  
 5           *follows:*

6           **"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

7           “(a) *SHORT TITLE.*—*This Act may be cited as the*  
 8           *‘Federal Property and Administrative Services Act of 1949’.*

9           “(b) *TABLE OF CONTENTS.*—*The table of contents for*  
 10          *this Act is as follows:*

- "Sec. 1. Short title; table of contents.
- "Sec. 2. Declaration of policy.
- "Sec. 3. Definitions.

*“TITLE I—ORGANIZATION*

- “Sec. 101. General Services Administration.*
- “Sec. 102. Transfer of affairs of Bureau of Federal Supply.*
- “Sec. 103. Transfer of affairs of the Federal Works Agency.*
- “Sec. 104. Records management: Transfer of the National Archives.*
- “Sec. 106. Redistribution of functions.*
- “Sec. 107. Transfer of funds.*
- “Sec. 109. General supply fund.*
- “Sec. 110. Information Technology Fund.*
- “Sec. 111. Automatic data processing equipment.*
- “Sec. 112. Federal information centers.*

*“TITLE II—PROPERTY MANAGEMENT*

- “Sec. 201. Procurement, warehousing, and related activities.*
- “Sec. 202. Property utilization.*
- “Sec. 203. Disposal of surplus property.*
- “Sec. 204. Proceeds from transfer or disposition of property.*
- “Sec. 205. Policies, regulations, and delegations.*
- “Sec. 206. Surveys, standardization, and cataloging.*
- “Sec. 207. Applicability of antitrust laws.*
- “Sec. 208. Employment of personnel.*
- “Sec. 209. Civil remedies and penalties.*
- “Sec. 210. Operation of buildings and related activities.*
- “Sec. 211. Motor vehicle identification and operation.*
- “Sec. 212. Reports to Congress.*

*“TITLE III—PROCUREMENT PROCEDURE*

- “Sec. 301. Declaration of purpose.*
- “Sec. 302. Application and procurement methods.*
- “Sec. 302A. Simplified acquisition threshold.*
- “Sec. 302B. Implementation of FACNET capability.*
- “Sec. 303. Competition requirements.*
- “Sec. 303A. Planning and solicitation requirements.*
- “Sec. 303B. Evaluation and award.*
- “Sec. 303C. Encouragement of new competition.*
- “Sec. 303D. Validation of proprietary data restrictions.*
- “Sec. 303F. Economic order quantities.*
- “Sec. 303G. Prohibition of contractors limiting subcontractor sales directly to the United States.*
- “Sec. 303H. Severable services contracts for periods crossing fiscal years.*
- “Sec. 304. Contract requirements.*
- “Sec. 304A. Multiyear contracts.*
- “Sec. 304B. Cost or pricing data: truth in negotiations.*
- “Sec. 304C. Examination of records of contractor.*
- “Sec. 305. Contract financing.*
- “Sec. 306. Allowable costs.*
- “Sec. 307. Administrative determinations and delegations.*
- “Sec. 309. Definitions.*
- “Sec. 310. Statutes not applicable.*
- “Sec. 311. Cooperative agreements for basic, applied, and advanced research.*
- “Sec. 312. Assignment and delegation of procurement functions and responsibilities.*
- “Sec. 313. Determinations and decisions.*

- “Sec. 314. *Definitions relating to procurement of commercial items.*  
 “Sec. 314A. *Preference for acquisition of commercial items and other nondevelopmental items.*  
 “Sec. 314B. *Pricing documentation for commercial items.*  
 “Sec. 314C. *Principle of construction with future laws.*  
 “Sec. 314D. *Inapplicability of certain provisions of law.*  
 “Sec. 315. *Contract goal for small disadvantaged businesses and certain institutions of higher education.*

“TITLE IV—FOREIGN EXCESS PROPERTY

- “Sec. 401. *Disposal of foreign excess property.*  
 “Sec. 402. *Methods and terms of disposal.*  
 “Sec. 403. *Proceeds; foreign currencies.*  
 “Sec. 404. *Miscellaneous provisions.*

“TITLE VI—GENERAL PROVISIONS

- “Sec. 601. *Applicability of existing procedures.*  
 “Sec. 602. *Repeal and saving provisions.*  
 “Sec. 603. *Authorization for appropriations and transfer of authority.*  
 “Sec. 604. *Separability.*  
 “Sec. 605. *Effective date.*

“TITLE VIII—URBAN LAND UTILIZATION

- “Sec. 801. *Short title.*  
 “Sec. 802. *Declaration of purpose and policy.*  
 “Sec. 803. *Disposal of urban lands.*  
 “Sec. 804. *Acquisition or change of use of real property.*  
 “Sec. 805. *Waiver during national emergency.*  
 “Sec. 806. *Definitions.*

“TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

- “Sec. 901. *Definitions.*  
 “Sec. 902. *Policy.*  
 “Sec. 903. *Requests for data on architectural and engineering services.*  
 “Sec. 904. *Negotiation of contracts for architectural and engineering services.*  
 “Sec. 905. *Short title.”.*

1           (b) AMENDMENTS FOR STYLISTIC CONSISTENCY.—

2                   (1) OFFICE OF FEDERAL PROCUREMENT POLICY

3           ACT.—The Office of Federal Procurement Policy Act

4           (41 U.S.C. 401 et seq.) is amended so that the section

5           designation and section heading of each section of

6           such Act is in the same form and typeface as the sec-

7           tion designation and heading of this section.

1           (2) *FEDERAL PROPERTY AND ADMINISTRATIVE*  
2           *SERVICES ACT OF 1949.*—*The Federal Property and*  
3           *Administrative Services Act of 1949 (41 U.S.C. 471*  
4           *et seq.) is amended so that the section designation*  
5           *and section heading of each section of such Act is in*  
6           *the same form and typeface as the section designation*  
7           *and heading of this section.*

8           (c) *REPEALS OF EXECUTED PROVISIONS.*—*The Office*  
9           *of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)*  
10          *is amended—*

11                 (1) *by striking out section 13; and*

12                 (2) *by striking out the first section 15.*

13           (d) *CROSS REFERENCE CORRECTIONS.*—*Section 3552*  
14          *of title 31, United States Code, is amended—*

15                 (1) *by striking out “section 111(h)” and insert-*  
16                 *ing in lieu thereof “section 111(f)”;* and

17                 (2) *by striking out “759(h)” and inserting in*  
18                 *lieu thereof “759(f)”.*

19           (e) *CONSISTENCY OF TERMINOLOGY WITH CUSTOMARY*  
20          *USAGE.*—*Section 304(b) of the Federal Property and Ad-*  
21          *ministrative Services Act of 1949 (41 U.S.C. 254(b)) is*  
22          *amended by striking out “per centum” each place it ap-*  
23          *pears and inserting in lieu thereof “percent”.*

24           (f) *ENACTMENT OF POPULAR NAMES OF CERTAIN*  
25          *ACTS.*—

1           (1) *BROOKS ARCHITECT-ENGINEERS ACT.*—Title  
2           *IX of the Federal Property and Administrative Serv-*  
3           *ices Act of 1949 (40 U.S.C. 541–544) is amended by*  
4           *adding at the end the following new section:*

5           **“SEC. 905. SHORT TITLE.**

6           *“This title may be cited as the ‘Brooks Architect-Engi-*  
7           *neers Act’.”.*

8           (2) *BROOKS AUTOMATIC DATA PROCESSING*  
9           *ACT.*—Section 111 of the Federal Property and Ad-  
10           *ministrative Services Act of 1949 (40 U.S.C. 759) is*  
11           *amended by adding at the end the following new sub-*  
12           *section:*

13           *“(h) This section may be cited as the ‘Brooks Auto-*  
14           *matic Data Processing Act’.”.*

15           (3) *BUY AMERICAN ACT.*—The Act of March 3,  
16           *1933 (41 U.S.C. 10a–10c), commonly referred to as*  
17           *the “Buy American Act”, is amended by adding at*  
18           *the end the following new section:*

19           *“SEC. 5. This Act may be cited as the ‘Buy American*  
20           *Act’.”.*

21           (4) *JAVITS-WAGNER-O’DAY ACT.*—The Act enti-  
22           *tled ‘An Act to create a Committee on Purchases of*  
23           *Blind-made Products, and for other purposes’, ap-*  
24           *proved June 25, 1938 (41 U.S.C. 46–48c), that was*  
25           *revised and reenacted in the Act of June 23, 1971 (85*



1 **SEC. 9002. REGULATIONS.**

2 *Not later than 240 days after the date of the enactment*  
 3 *of this Act, the Federal Acquisition Regulation (referred to*  
 4 *in section 25(c) of the Office of Federal Procurement Policy*  
 5 *Act (41 U.S.C. 421(c))) shall be revised, in final form, to*  
 6 *implement this Act and the amendments made by this Act.*

7 **SEC. 9003. EVALUATION BY THE COMPTROLLER GENERAL.**

8 *(a) EVALUATION RELATING TO ISSUANCE OF REGULA-*  
 9 *TIONS.—Not later than 180 days after the issuance in final*  
 10 *form of revisions to the Federal Acquisition Regulation pur-*  
 11 *suant to section 9002, the Comptroller General shall submit*  
 12 *to Congress a report evaluating compliance with such sec-*  
 13 *tion 9002.*

14 *(b) EVALUATION OF IMPLEMENTATION OF REGULA-*  
 15 *TIONS.—Not later than 18 months after issuance in final*  
 16 *form of revisions to the Federal Acquisition Regulation pur-*  
 17 *suant to section 9002, the Comptroller General shall submit*  
 18 *to Congress a report evaluating the effectiveness of the regu-*  
 19 *lations implementing this Act in streamlining the acquisi-*  
 20 *tion system and fulfilling the other purposes of this Act.*

*Attest:*

*Clerk.*

S 1587 EAH—2

S 1587 EAH—3

- S 1587 EAH—4
- S 1587 EAH—5
- S 1587 EAH—6
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- S 1587 EAH—21