

Calendar No. 451

103^D CONGRESS
2^D SESSION

S. 1587

[Report No. 103-258]
[Report No. 103-259]

A BILL

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

MAY 25 (legislative day, MAY 16), 1994
Committee on Small Business discharged and ordered
placed on the Calendar

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IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 13), 1993

Mr. GLENN (for himself, Mr. BINGAMAN, Mr. LEVIN, Mr. NUNN, Mr. BUMPERS, Mr. LIEBERMAN, Mr. ROTH, and Mr. COHEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

NOVEMBER 1 (legislative day, OCTOBER 13), 1993

Ordered, that if and when reported from the Committee on Governmental Affairs, the bill be referred to the Committee on Armed Services for not to exceed 30 session days, with instructions that if the Committee on Armed Services does not report the bill within that time period, they be deemed discharged from further consideration of the bill and it be referred to the Committee on Small Business for not to exceed 20 session days, solely for consideration of title IV of the introduced bill, with instructions that if the Committee on Small Business does not report the bill within that time period they be deemed discharged from further consideration of the bill and it be placed on the calendar

MAY 11 (legislative day, MAY 2), 1994

Reported by Mr. GLENN, with an amendment; referred to the Committee on Armed Services pursuant to the order of November 1, 1993

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 12 (legislative day, MAY 2), 1994

Reported by Mr. NUNN, without amendment, referred to the Committee on Small Business pursuant to the order of November 1, 1993

MAY 25 (legislative day, MAY 16), 1994
Committee on Small Business discharged and ordered placed on the calendar

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acquisition
5 Streamlining Act of 1993”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 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. Exclusion of particular sources.
Sec. 1003. Approval for use of noncompetitive procedures.
Sec. 1004. Reference to head of a contracting activity.
Sec. 1005. Task and delivery order contracts.

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. Award of costs and fees in agency settlement of protests.

SUBPART C—KINDS OF CONTRACTS

- Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.
- Sec. 1022. Technical and conforming amendments.

SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

- Sec. 1031. Encouragement of competition and cost savings.
- Sec. 1032. 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. Exclusion of particular sources.
- Sec. 1053. Approval for use of noncompetitive procedures.
- Sec. 1054. Reference to head of a contracting activity.
- Sec. 1055. Task and delivery order contracts.

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. Award of costs and fees in agency settlement of protests.

SUBPART C—KINDS OF CONTRACTS

- Sec. 1071. Agency head determination regarding use of cost type or incentive contract.

PART III—ACQUISITIONS GENERALLY

- Sec. 1091. Repeal of requirement for annual report on competition.

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. Limitation on authority to require a submission not otherwise required.
- Sec. 1204. Additional special rules for commercial items.
- Sec. 1205. Right of United States to examine contractor records.

- Sec. 1206. Required regulations.
- Sec. 1207. Consistency of time references.
- Sec. 1208. 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. Delegation of contracting authority.
- Sec. 1302. Research projects.
- Sec. 1303. Elimination of inflexible terminology regarding coordination and communication of defense research activities.

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 THE FEDERAL COURTS

- Sec. 1421. Nonexclusivity of remedies.
- Sec. 1422. Jurisdiction of the United States Court of Federal Claims.

PART III—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. Jurisdiction of district courts.
- Sec. 1438. Matters to be covered in regulations.
- Sec. 1439. Definitions.
- Sec. 1440. Oversight of acquisition of automatic data processing equipment by Federal agencies.

Subtitle E—Definitions and Other Matters

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 1501. Definitions.
- Sec. 1502. Delegation of procurement functions.
- Sec. 1503. Determinations and decisions.
- Sec. 1504. Undefined contractual actions: restrictions.
- Sec. 1505. Production special tooling and production special test equipment: contract terms and conditions.
- Sec. 1506. Regulations for bids.

Sec. 1507. Repeal of executed requirement relating to certificate of independent price determination in certain Department of Defense contract solicitations.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 1551. Definitions.
 Sec. 1552. Delegation of procurement functions.
 Sec. 1553. Determinations and decisions.
 Sec. 1554. Undefined contractual actions: restrictions.
 Sec. 1555. Repeal of amendments to uncodified title.

TITLE II—CONTRACT ADMINISTRATION

Subtitle A—Contract Payment

PART I—ARMED SERVICES ACQUISITIONS

Sec. 2001. Contract financing.
 Sec. 2002. Contracts: vouchering procedures.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 2051. Contract financing.

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

Sec. 2101. Allowable contract costs.
 Sec. 2102. Contract profit controls during emergency periods.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 2151. Allowable contract costs.

PART III—ACQUISITIONS GENERALLY

Sec. 2191. 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

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2401. Procurement of critical aircraft and ship spare parts; quality control.
- Sec. 2402. Contractor guarantees regarding weapon systems.
- Sec. 2403. Repeal of requirement for complete delivery of subsistence supplies at specific place upon inspection.

PART II—ACQUISITIONS GENERALLY

- Sec. 2451. Section 3737 of the Revised Statutes: expansion of authority to prohibit setoffs against assignees; reorganization of section; revision of obsolete provisions.
- Sec. 2452. Repeal of requirement for deposit of contracts with GAO.

Subtitle F—Claims and Disputes

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2501. Certification of contract claims.

PART II—ACQUISITIONS GENERALLY

- Sec. 2551. Concurrent jurisdiction of United States district courts under the Little Tucker Act.
- Sec. 2552. Contract Disputes Act improvements.

TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

- Sec. 3001. Requirement for independent cost estimates and manpower estimates before development or production.
- Sec. 3002. Enhanced program stability.
- Sec. 3003. Repeal of requirement for Defense Enterprise Programs.
- Sec. 3004. Repeal of requirement for competitive prototyping in major programs.
- Sec. 3005. Repeal of requirement for competitive alternative sources in major programs.

Subtitle B—Testing Statutes

- Sec. 3011. Repeal of testing requirement for wheeled or tracked vehicles.
- Sec. 3012. Major systems and munitions programs: survivability and lethality testing.
- Sec. 3013. Operational test and evaluation of defense acquisition programs.
- Sec. 3014. Low-rate initial production of new systems.

Subtitle C—Service Specific Laws

- Sec. 3021. Industrial mobilization.
- Sec. 3022. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.
- Sec. 3023. Procurement for experimental purposes.
- Sec. 3024. Repeal of authority for procurement of production equipment.
- Sec. 3025. Availability of Department of Defense samples, drawings, information, equipment, materials, and certain services.
- Sec. 3026. Repeal of duplicative general procurement authority.
- Sec. 3027. Repeal of authority to delegate the procurement of Army rations.

- Sec. 3028. Repeal of authority to purchase exceptional subsistence supplies without advertising.
- Sec. 3029. Repeal of authority to obtain assistance of United States mapping agencies.
- Sec. 3030. Repeal of authority to reclaim unserviceable ammunition.
- Sec. 3031. Gratuitous services of officers of certain reserve components.
- Sec. 3032. Civil Reserve Air Fleet.
- Sec. 3033. Repeal of Navy authority regarding research and development, procurement, and construction of guided missiles.
- Sec. 3034. Exchange of scientific personnel.
- Sec. 3035. Repeal of authority for Secretary of the Navy to provide temporary relief for contractors and contractor employees from losses caused by enemy action.
- Sec. 3036. Repeal of authority for Secretary of the Navy to sell degaussing equipment.
- Sec. 3037. Repeal of authority for alternative use of appropriations for construction or conversion of vessels.
- Sec. 3038. Repeal of authority for conversion of combatant and auxiliary naval vessels.
- Sec. 3039. Construction of combatant and escort vessels and assignment of vessel projects.
- Sec. 3040. Repeal of requirement for estimates in connection with bids on construction of naval vessels.
- Sec. 3041. Repeal of requirement for construction of vessels on Pacific coast.
- Sec. 3042. Fitness of naval vessels: examination; striking unfit vessels; disposal.
- Sec. 3043. Repeal of policy on constructing combatant vessels.
- Sec. 3044. Naval salvage facilities.

Subtitle D—Department of Defense Commercial and Industrial Activities

- Sec. 3051. Factories and arsenals: manufacture at.
- Sec. 3052. Accounting requirement for contracted advisory and assistance services.

Subtitle E—Fuel and Energy-Related Laws

- Sec. 3061. Liquid fuels and natural gas: contracts for storage, handling, or distribution.
- Sec. 3062. Acquisition of petroleum and natural gas: authority to waive procedures.

Subtitle F—Fiscal Statutes

- Sec. 3071. Disbursement of funds of military department to cover obligations of another agency of Department of Defense.

Subtitle G—Miscellaneous

- Sec. 3081. Obligation of funds: limitation.
- Sec. 3082. Repeal of provisions for the encouragement of aviation.
- Sec. 3083. Repeal of requirements regarding product evaluation activities.
- Sec. 3084. Repeal of price adjustment authority and purchase authority relating to the procurement of milk.
- Sec. 3085. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.

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

Subtitle A—Simplified Acquisition Threshold

PART I—ESTABLISHMENT OF THRESHOLD

Sec. 4001. Simplified acquisition threshold.

PART II—SIMPLIFICATION OF PROCEDURES

Sec. 4011. Simplified acquisition procedures.

Sec. 4012. Small business reservation.

Sec. 4013. Procurement notice.

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 requirement for contract clause regarding contingent fees.

Sec. 4032. Inapplicability of prohibition on limiting subcontractor direct sales to the United States.

Sec. 4033. Inapplicability of authority to examine books and records of contractors.

Sec. 4034. Inapplicability of requirement to identify suppliers and sources of supplies.

Sec. 4035. Inapplicability of prohibition against doing business with certain offerors or contractors.

Sec. 4036. Inapplicability of preference for use of United States vessels for transporting supplies of the Armed Forces.

SUBPART C—CIVILIAN AGENCY ACQUISITIONS

Sec. 4041. Inapplicability of requirement for contract clause regarding contingent fees.

Sec. 4042. Inapplicability of prohibition on limiting subcontractor direct sales to the United States.

Sec. 4043. Inapplicability of authority to examine books and records of contractors.

SUBPART D—ACQUISITIONS GENERALLY

Sec. 4051. Inapplicability of limitation on use of funds to influence certain Federal actions.

Sec. 4052. Inapplicability of requirement for contract clause relating to kickbacks.

Sec. 4053. Inapplicability of the Miller Act to contracts below the simplified acquisition threshold.

Sec. 4054. Inapplicability of Contract Work Hours and Safety Standards Act.

Sec. 4055. Inapplicability of the Drug-Free Workplace Act of 1988.

- Sec. 4056. Inapplicability of a requirement in the Merchant Marine Act, 1936, to ship on American-flag commercial vessels.
- Sec. 4057. Inapplicability of certain procurement integrity requirements.

PART IV—CONFORMING AMENDMENTS

- Sec. 4071. Armed services acquisitions.
- Sec. 4072. Civilian agency acquisitions.
- Sec. 4073. Office of Federal Procurement Policy Act.
- Sec. 4074. Small Business Act.

PART V—REVISION OF REGULATIONS

- Sec. 4081. Revision required.

Subtitle B—Socioeconomic and Small Business Laws

- Sec. 4101. Armed services acquisitions.
- Sec. 4102. Acquisitions generally.
- Sec. 4103. Direct contracting with small businesses.

Subtitle C—Miscellaneous Acquisition Laws

- Sec. 4151. Repeal of obsolete laws relating to procurement of naval aircraft and components.
- Sec. 4152. Revision and codification of prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
- Sec. 4153. Restriction on use of noncompetitive procedures for procurement from a particular source.

TITLE V—INTELLECTUAL PROPERTY

Subtitle A—Technology Transfer

- Sec. 5001. Copyright protection for computer programs of the Federal Government.
- Sec. 5002. Use of copyrighted works of the Federal Government.
- Sec. 5003. Distribution of royalties received by Federal agencies.
- Sec. 5004. Exception to prohibition on copyright protection for works of the Federal Government.

Subtitle B—Government Use of Private Patents, Copyrights, and Trade Secrets

- Sec. 5011. Government use or manufacture of a patented invention.
- Sec. 5012. Department of Defense acquisition of intellectual property rights.

TITLE VI—STANDARDS OF CONDUCT

Subtitle A—Ethics Provisions

- Sec. 6001. Amendments to Office of Federal Procurement Policy Act.
- Sec. 6002. Amendments to title 18, United States Code.
- Sec. 6003. Repeal of superseded and obsolete laws.
- Sec. 6004. Implementation.

Subtitle B—Additional Amendments

- Sec. 6051. Contracting functions performed by Federal personnel.
 Sec. 6052. Repeal of executed requirement for study and report.
 Sec. 6053. Waiting period for significant changes proposed for acquisition regulations.

TITLE VII—DEFENSE TRADE AND COOPERATION

- Sec. 7001. Purchases of foreign goods.
 Sec. 7002. International cooperative agreements.
 Sec. 7003. Acquisition, cross-servicing agreements, and standardization.

TITLE VIII—COMMERCIAL ITEMS

- Sec. 8001. Definitions.
 Sec. 8002. Preference for acquisition of commercial items and nondevelopmental items.
 Sec. 8003. Acquisition of commercial items.
 Sec. 8004. Class waiver of applicability of certain laws.
 Sec. 8005. Inapplicability of certain provisions of law.
 Sec. 8006. Flexible deadlines for submission of offers of commercial items.
 Sec. 8007. Advocate for Acquisition of Commercial and Nondevelopmental Items.
 Sec. 8008. Provisions not affected.
 Sec. 8009. Comptroller General review of Federal Government use of market research.

TITLE IX—EFFECTIVE DATE

- Sec. 9001. Effective date.

1 TITLE I—CONTRACT FORMATION

2 Subtitle A—Competition Statutes

3 PART I—ARMED SERVICES ACQUISITIONS

4 Subpart A—Competition Requirements

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

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

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

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

5 **SEC. 1002. EXCLUSION OF PARTICULAR SOURCES.**

6 Section 2304(b) of title 10, United States Code, is
7 amended—

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

10 (2) by inserting after paragraph (1) the follow-
11 ing new paragraph (2):

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

15 (3) in paragraph (4), as redesignated by para-
16 graph (1), by striking out “paragraphs (1) and (2)”
17 and inserting in lieu thereof “paragraphs (1) and
18 (3)”.

19 **SEC. 1003. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**
20 **CEDURES.**

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

1 **SEC. 1004. REFERENCE TO HEAD OF A CONTRACTING AC-**
 2 **TIVITY.**

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

5 (1) in paragraph (1)(B)(ii)—

6 (A) by striking out “head of the procuring
 7 activity” and inserting in lieu thereof “head of
 8 the contracting activity”; and

9 (B) by striking out “head of the procuring
 10 activity’s” and inserting in lieu thereof “head of
 11 the contracting activity’s”; and

12 (2) in paragraph (6)(A), by striking out “head
 13 of a procuring activity” and inserting in lieu thereof
 14 “head of a contracting activity”.

15 **SEC. 1005. TASK AND DELIVERY ORDER CONTRACTS.**

16 (a) **AUTHORITY.**—

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

20 **“§ 2304a. Task and delivery order contracts**

21 “(a) **AUTHORITY TO AWARD.**—Subject to the re-
 22 quirements of this section, the head of an agency may
 23 enter into a contract that does not procure or specify a
 24 firm quantity of supplies or services (other than a mini-
 25 mum or maximum quantity) and that provides for the is-
 26 suance of delivery orders or task orders during the speci-

1 fied period of the contract. The head of an agency may
2 enter into such a contract only under the authority of this
3 section.

4 “(b) LIMITATION ON CONTRACT PERIOD.—The pe-
5 riod of a contract referred to in subsection (a), including
6 all periods of extensions of the contract under options,
7 modifications, or otherwise, may not exceed 3 years, ex-
8 cept that, when multiple contracts are awarded under sub-
9 section (c)(4) pursuant to the same solicitation, the period
10 of each such contract may exceed 3 years but may not
11 exceed 5 years.

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

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

1 to decide whether to request the solicitation and consider
2 submitting an offer.

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

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

8 ~~“(B) The maximum quantity or dollar value of~~
9 ~~supplies or services to be procured under the con-~~
10 ~~tract.~~

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

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

21 ~~“(B) In any solicitation for an advisory and assist-~~
22 ~~ance services contract for a period in excess of 1 year,~~
23 ~~or for an amount (including all options) in excess of~~
24 ~~\$10,000,000, the head of an agency shall include a state-~~
25 ~~ment that the head of the agency reserves the option—~~

1 ~~“(i) to award separate contracts under subpara-~~
2 ~~graph (A); or~~

3 ~~“(ii) to award only one contract if the head of~~
4 ~~the agency determines in writing that only one of~~
5 ~~the offerers is capable of providing the services re-~~
6 ~~quired at the level of quality required.~~

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

11 ~~“(d) ORDERS.—(1) The following actions are not re-~~
12 ~~quired for a delivery order or task order issued under a~~
13 ~~contract entered into in accordance with this section:~~

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

18 ~~“(B) Except as provided in paragraph (2), a~~
19 ~~competition (or a waiver of competition approved in~~
20 ~~accordance with section 2304(f) of this title) that is~~
21 ~~separate from that used for entering into the con-~~
22 ~~tract.~~

23 ~~“(2)(A) When multiple contracts are awarded under~~
24 ~~subsection (c)(4), each delivery order or task order issued~~
25 ~~under such contracts shall be competed among all of the~~

1 contractors awarded such contracts unless the contracting
2 officer determines in writing that—

3 “(i) the agency’s need for the supplies or serv-
4 ices ordered is of such unusual urgency that com-
5 petition would result in unacceptable delays in fulfill-
6 ing the agency’s needs;

7 “(ii) the supplies or services ordered are so
8 unique or highly specialized that only one such con-
9 tractor is capable of providing the supplies or serv-
10 ices required at the level of quality required; or

11 “(iii) the delivery order or task order should be
12 issued on a sole-source basis in the interest of econ-
13 omy and efficiency because it is a logical follow-on
14 to a delivery order or task order already issued on
15 a competitive basis.

16 “(B) When a delivery order or task order is competed
17 pursuant to subparagraph (A), the order shall include a
18 statement of work that clearly specifies all tasks to be per-
19 formed under the order.

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

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

7 ~~“(2) Unless use of procedures other than competitive~~
8 ~~procedures is authorized by an exception in subsection (e)~~
9 ~~of section 2304 of this title and approved in accordance~~
10 ~~with subsection (f) of such section, competitive procedures~~
11 ~~shall be used for making such a modification.~~

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

16 ~~“(f) TASK ORDER OMBUDSMAN.—Each head of an~~
17 ~~agency who awards multiple contracts under subsection~~
18 ~~(e)(4) shall appoint or designate a task order ombudsman~~
19 ~~who shall be responsible for reviewing complaints from the~~
20 ~~contractors on such contracts and ensuring that task or-~~
21 ~~ders are issued on a competitive basis when required under~~
22 ~~subsection (d)(2). The task order ombudsman shall be a~~
23 ~~senior agency official who is independent of the contract-~~
24 ~~ing officer for the contracts and may be the agency’s com-~~
25 ~~petition advocate.”.~~

1 ~~“(I) either a statement that the pro-~~
2 ~~posals are intended to be evaluated with,~~
3 ~~and award made after, discussions with the~~
4 ~~offerors, or a statement that the proposals~~
5 ~~are intended to be evaluated, and award~~
6 ~~made, without discussions with the offerors~~
7 ~~(other than discussions conducted for the~~
8 ~~purpose of minor clarification) unless dis-~~
9 ~~cussions are determined to be necessary;~~
10 ~~and”;~~ and

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

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

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

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

1 ~~“(iii) shall disclose to offerors whether all eval-~~
2 ~~uation factors other than price or cost, when com-~~
3 ~~bined, are—~~

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

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

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

10 ~~“(B) Nothing in this paragraph prohibits an agency~~
11 ~~from—~~

12 ~~“(i) providing additional information in a solici-~~
13 ~~tation, including numeric weights for all evaluation~~
14 ~~factors; or~~

15 ~~“(ii) stating in a solicitation that award will be~~
16 ~~made to the offeror that meets the solicitation’s~~
17 ~~mandatory requirements at the lowest price or~~
18 ~~cost.”.~~

19 ~~**SEC. 1012. SOLICITATION PROVISION REGARDING EVALUA-**~~
20 ~~**TION OF PURCHASE OPTIONS.**~~

21 ~~(a) OPTIONS FOR ADDITIONAL PURCHASES.—Sub-~~
22 ~~section (a) of section 2305 of title 10, United States Code,~~
23 ~~as amended by section 1011, is further amended by adding~~
24 ~~at the end the following new paragraph:~~

1 “(4) The head of an agency, in issuing a solicitation
2 for a contract to be awarded using sealed bid procedures,
3 may not include in such solicitation a clause providing for
4 the evaluation of prices under the contract for options to
5 purchase additional supplies or services under the contract
6 unless the head of the agency has determined that there
7 is a reasonable likelihood that the options will be exer-
8 cised.”.

9 (b) REPEAL OF SUPERSEDED PROVISION.—Section
10 2301(a) of such title is amended—

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

12 (2) by inserting “and” at the end of paragraph
13 (5); and

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

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

17 (a) SEALED BID PROCEDURES.—Section 2305(b)(3)
18 of title 10, United States Code, is amended by adding at
19 the end the following: “Within 3 days after the date of
20 contract award, the head of the agency shall notify all
21 offerors not awarded the contract that the contract has
22 been awarded.”.

23 (b) COMPETITIVE PROPOSALS PROCEDURES.—Sec-
24 tion 2305(b)(4)(B) of title 10, United States Code, is
25 amended in the second sentence by striking out “shall

1 promptly notify” and inserting in lieu thereof “, within
2 3 days after the date of contract award, shall notify”.

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

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

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

8 (2) by inserting after paragraph (4) the follow-
9 ing new paragraph (5):

10 “(5)(A) When a contract is awarded by an agency
11 on the basis of competitive proposals, an unsuccessful
12 offeror, upon written request received by the agency within
13 7 days after the date of contract award, shall be debriefed
14 and furnished the basis for the selection decision and con-
15 tract award. An employee of the agency shall debrief the
16 offeror within 7 days after receipt of the request by the
17 agency.

18 “(B) The debriefing shall provide the offeror with—

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

21 “(ii) the overall evaluated cost of the offer of
22 the contractor awarded the contract and the overall
23 evaluated cost of the offer of the debriefed offeror;

24 “(iii) the overall ranking of all offers and the
25 total technical and cost scores of all offers;

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

2 “(v) in the case of a proposal that incorporates
3 equipment that is a commercial item, the make and
4 model of the item incorporated in the offer of the
5 contractor awarded the contract; and

6 “(vi) reasonable responses to questions posed by
7 the debriefed offeror as to whether source selection
8 procedures set forth in the solicitation, applicable
9 regulations, and other applicable authorities were
10 followed by the agency.

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

16 “(i) trade secrets;

17 “(ii) privileged or confidential manufacturing
18 processes and techniques; and

19 “(iii) commercial and financial information that
20 is privileged or confidential, including cost break-
21 downs, profit, indirect cost rates, and similar infor-
22 mation.

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

1 “(E) If, within one year after the date of the contract
2 award and as a result of a successful procurement protest
3 or otherwise, the agency seeks to fulfill the requirement
4 under the contract either on the basis of a new solicitation
5 of offers or on the basis of the best and final offers consid-
6 ered in the awarding of that contract, the agency shall
7 provide each such offeror with—

8 “(i) all information provided in debriefings
9 under this paragraph regarding the offer of the con-
10 tractor awarded the contract; and

11 “(ii) all comparable information with respect to
12 the original offerors.

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

15 **SEC. 1015. PROTEST FILE.**

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

18 “(e)(1) If, in the case of a solicitation for a contract
19 issued by, or an award or proposed award of a contract
20 by, the head of an agency, a protest is filed pursuant to
21 the procedures in subchapter V of chapter 35 of title 31
22 and an actual or prospective offeror so requests, a file of
23 the protest shall be established by the contracting activity
24 and reasonable access shall be provided to actual or pro-
25 spective offerors.

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

5 “(3) Regulations implementing this subsection shall
6 be consistent with the regulations regarding the prepara-
7 tion and submission of an agency’s protest file (the so-
8 called ‘rule 4 file’) for protests to the General Services
9 Board of Contract Appeals under the Contract Disputes
10 Act of 1978 (41 U.S.C. 601 et seq.).”.

11 **SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
12 **MENT OF PROTESTS.**

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

16 “(f) If, in connection with a protest, the head of an
17 agency determines that a solicitation, proposed award, or
18 award does not satisfy the requirements of law or regula-
19 tion, the head of the agency may take any action set out
20 in subparagraphs (A) through (F) of section 3554(b)(1)
21 of title 31.”.

1 **Subpart C—Kinds of Contracts**

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

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

7 **SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.**

8 (a) **REPEAL OF UNNECESSARY CROSS REF-**
 9 **ERENCE.**—Subsection (f) of section 2306 of title 10, Unit-
 10 ed States Code, is repealed.

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

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

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

21 **SEC. 1031. ENCOURAGEMENT OF COMPETITION AND COST**
 22 **SAVINGS.**

23 (a) **TRANSFER.**—The text of section 2317 of title 10,
 24 United States Code—
 25 (1) is amended—

1 (A) by striking out “The Secretary of De-
2 fense” and inserting in lieu thereof “(c) EN-
3 COURAGEMENT OF COMPETITION AND COST
4 SAVINGS.—The Secretary”; and

5 (B) by striking out “contracts covered by
6 this chapter” and inserting in lieu thereof “con-
7 tracts of the Department of Defense”; and

8 (2) is transferred to section 1701 of title 10,
9 United States Code, and inserted at the end of such
10 section.

11 (b) CLERICAL AMENDMENTS.—Chapter 137 of title
12 10, United States Code, is amended—

13 (1) by striking out the section heading of sec-
14 tion 2317; and

15 (2) in the table of sections at the beginning of
16 such chapter, by striking out the item relating to
17 section 2317.

18 **SEC. 1032. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
19 **PORT BY ADVOCATES FOR COMPETITION.**

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

1 **PART II—CIVILIAN AGENCY ACQUISITIONS**

2 **Subpart A—Competition Requirements**

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

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

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

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

15 **SEC. 1052. EXCLUSION OF PARTICULAR SOURCES.**

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

19 (1) by redesignating paragraphs (2) and (3) as
20 paragraphs (3) and (4), respectively;

21 (2) by inserting after paragraph (1) the follow-
22 ing new paragraph (2):

23 “(2) The determination required of the agency head
24 in paragraph (1) may not be made for a class of purchases
25 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 **SEC. 1053. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**
 6 **CEDURES.**

7 Section ~~303(f)(1)(B)(i)~~ of the Federal Property and
 8 Administrative Services Act of 1949 (41 U.S.C.
 9 ~~253(f)(1)(B)(i)~~) is amended by inserting before the semi-
 10 colon at the end the following: “or by an official referred
 11 to in clause ~~(ii)~~, ~~(iii)~~, or ~~(iv)~~”.

12 **SEC. 1054. REFERENCE TO HEAD OF A CONTRACTING AC-**
 13 **TIVITY.**

14 Section ~~303(f)(1)(B)(ii)~~ of the Federal Property and
 15 Administrative Services Act of 1949 (41 U.S.C.
 16 ~~253(f)(1)(B)(ii)~~) is amended by striking out “head of the
 17 procuring activity” and inserting in lieu thereof “head of
 18 the contracting activity”.

19 **SEC. 1055. TASK AND DELIVERY ORDER CONTRACTS.**

20 ~~(a) AUTHORITY.~~—Title III of the Federal Property
 21 and Administrative Services Act of 1949 (41 U.S.C. 251
 22 et seq.) is amended by inserting after section 303G the
 23 following new section:

24 “TASK AND DELIVERY ORDER CONTRACTS

25 “SEC. 303H. ~~(a) AUTHORITY TO AWARD.~~—Subject
 26 to the requirements of this section, an agency head may

1 enter into a contract that does not procure or specify a
2 firm quantity of supplies or services (other than a mini-
3 mum or maximum quantity) and that provides for the is-
4 suance of delivery orders or task orders during the speci-
5 fied period of the contract. The agency head may enter
6 into such a contract only under the authority of this sec-
7 tion.

8 “(b) CONTRACT PERIOD NOT TO EXCEED 3
9 YEARS.—The period of a contract referred to in sub-
10 section (a), including all periods of extensions of the con-
11 tract under options, modifications, or otherwise, may not
12 exceed 3 years, except that, when multiple contracts are
13 awarded under subsection (c)(4) pursuant to the same so-
14 licitation, the period of each such contract may exceed 3
15 years but may not exceed 5 years.

16 “(c) AWARD PROCEDURES.—(1) An agency head may
17 use procedures other than competitive procedures to enter
18 into a contract referred to in subsection (a) only if an ex-
19 ception in subsection (c) of section 303 applies to the con-
20 tract and the use of such procedures is approved in ac-
21 cordance with subsection (f) of such section.

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

1 magnitude, and duration of the proposed contract in a
2 manner that would reasonably enable a potential offeror
3 to decide whether to request the solicitation and consider
4 submitting an offer.

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

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

10 “(B) The maximum quantity or dollar value of
11 supplies or services to be procured under the con-
12 tract.

13 “(C) A statement of work, specifications, or
14 other description that reasonably describes the gen-
15 eral scope, nature, complexity, and purposes of the
16 supplies or services to be procured under the con-
17 tract.

18 “(4)(A) An agency head may, on the basis of one so-
19 licitation, award separate contracts under this section for
20 the same or similar supplies or services to two or more
21 sources if the solicitation states that the agency head has
22 the option to do so.

23 “(B) In any solicitation for an advisory and assist-
24 ance services contract for a period in excess of 1 year,

1 or for an amount (including all options) in excess of
2 \$10,000,000, an agency head shall—

3 ~~“(i) provide for a multiple award under sub-~~
4 ~~paragraph (A); and~~

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

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

14 ~~“(d) ORDERS.—(1) The following actions are not re-~~
15 ~~quired for a delivery order or task order issued under a~~
16 ~~contract entered into in accordance with this section:~~

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

21 ~~“(B) Except as provided in paragraph (2), a~~
22 ~~competition (or a waiver of competition approved in~~
23 ~~accordance with section 303(f)) that is separate~~
24 ~~from that used for entering into the contract.~~

1 “(2)(A) When multiple contracts are awarded under
2 subsection (c)(4), each delivery order or task order issued
3 under such contracts shall be competed among all of the
4 contractors awarded such contracts unless the contracting
5 officer determines in writing that—

6 “(i) the agency’s need for the supplies or serv-
7 ices ordered is of such unusual urgency that com-
8 petition would result in unacceptable delays in fulfill-
9 ing the agency’s needs;

10 “(ii) the supplies or services ordered are so
11 unique or highly specialized that only one such con-
12 tractor is capable of providing the supplies or serv-
13 ices required at the level of quality required; or

14 “(iii) the delivery order or task order should be
15 issued on a sole-source basis in the interest of econ-
16 omy and efficiency because it is a logical follow-on
17 to a delivery order or task order already issued on
18 a competitive basis.

19 “(B) When a delivery order or task order is competed
20 pursuant to subparagraph (A), the order shall include a
21 statement of work that clearly specifies all tasks to be per-
22 formed under the order.

23 “(3) A protest is not authorized in connection with
24 the issuance, proposed issuance, or competing of a delivery
25 order or task order except for a protest on the ground

1 that the order increases the scope, period, or maximum
2 value of the contract under which the order is issued.

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

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

14 ~~“(3) Notice regarding the modification shall be pro-~~
15 ~~vided in accordance with section 18 of the Office of Fed-~~
16 ~~eral Procurement Policy Act (41 U.S.C. 416) and section~~
17 ~~8(e) of the Small Business Act (15 U.S.C. 637(e)).~~

18 ~~“(f) TASK ORDER OMBUDSMAN.—Each agency head~~
19 ~~who awards multiple contracts under subsection (c)(4)~~
20 ~~shall appoint or designate a task order ombudsman who~~
21 ~~shall be responsible for reviewing complaints from the con-~~
22 ~~tractors on such contracts and ensuring that task orders~~
23 ~~are issued on a competitive basis when required under sub-~~
24 ~~section (d)(2). The task order ombudsman shall be a sen-~~
25 ~~ior agency official who is independent of the contracting~~

1 officer for the contracts and may be the agency's competi-
2 tion advocate.”.

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

“Sec. 303H. Task and delivery order contracts.”.

6 **Subpart B—Planning, Solicitation, Evaluation, and**
7 **Award**

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

9 (a) ~~CONTENT OF SOLICITATION.~~—Section 303A of
10 the Federal Property and Administrative Services Act of
11 1949 (41 U.S.C. 253a) is amended—

12 (1) in subsection (b)(1)(A)—

13 (A) by inserting “and significant
14 subfactors” after “all significant factors”; and

15 (B) by striking out “(including price)” and
16 inserting “(including cost or price, cost-related
17 or price-related factors and subfactors, and
18 noncost-related or nonprice-related factors and
19 subfactors)”; and

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

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

24 “(i) either a statement that the pro-
25 posals are intended to be evaluated with,

1 and award made after, discussions with the
2 offerors, or a statement that the proposals
3 are intended to be evaluated, and award
4 made, without discussions with the offerors
5 (other than discussions conducted for the
6 purpose of minor clarification) unless dis-
7 cussions are determined to be necessary;
8 and”;

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

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

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

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

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

1 “(i) significantly more important than
2 price or cost;

3 “(ii) approximately equal in importance to
4 price or cost; or

5 “(iii) significantly less important than
6 price or cost.

7 “(2) Nothing in this subsection prohibits an agency
8 from—

9 “(A) providing additional information in a solicitation, including numeric weights for all evaluation
10 factors; or
11 factors; or

12 “(B) stating in a solicitation that award will be
13 made to the offeror that meets the solicitation’s
14 mandatory requirements at the lowest price or
15 cost.”.

16 (b) EVALUATION AND AWARD.—Section 303B of the
17 Federal Property and Administrative Services Act of 1949
18 (41 U.S.C. 253b) is amended—

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

21 (2) in subsection (c), by inserting “in accordance with subsection (a)” in the second sentence
22 after “shall evaluate the bids”; and
23 after “shall evaluate the bids”; and

24 (3) in subsection (d)—

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

3 “(1) An agency head shall evaluate competitive pro-
4 posals in accordance with subsection (a) and may award
5 a contract—

6 “(A) after discussions with the offerors, pro-
7 vided that written or oral discussions have been con-
8 ducted with all responsible offerors who submit pro-
9 posals within the competitive range; or

10 “(B) based on the proposals received and with-
11 out discussions with the offerors (other than discus-
12 sions conducted for the purpose of minor clarifica-
13 tion); provided that, as required by section
14 303A(b)(2)(B)(i), the solicitation included a state-
15 ment that proposals are intended to be evaluated,
16 and award made, without discussions, unless discus-
17 sions are determined to be necessary.”; and

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

21 (c) APPLICABILITY.—

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

1 (A) solicitations for sealed bids or competi-
2 tive proposals issued after the end of the 180-
3 day period beginning on the date of the enact-
4 ment of this Act; and

5 (B) contracts awarded pursuant to those
6 solicitations.

7 (2) ~~AUTHORITY TO APPLY AMENDMENTS~~
8 EARLY.—The head of an executive agency may apply
9 the amendments made by this section to solicitations
10 issued before the end of the period referred to in
11 paragraph (1). The head of the executive agency
12 shall publish in the Federal Register notice of any
13 such earlier date of application at least 10 days be-
14 fore that date.

15 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**
16 **TION OF PURCHASE OPTIONS.**

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

21 “(d) An agency head, in issuing a solicitation for a
22 contract to be awarded using sealed bid procedures, may
23 not include in such solicitation a clause providing for the
24 evaluation of prices under the contract for options to pur-
25 chase additional supplies or services under the contract

1 unless the agency head has determined that there is a rea-
2 sonable likelihood that the options will be exercised.”.

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

4 (a) SEALED BID PROCEDURES.—Subsection (c) of
5 section 303B of the Federal Property and Administrative
6 Services Act of 1949 (41 U.S.C. 253b) is amended by add-
7 ing at the end the following: “Within 3 days after the date
8 of contract award, the agency head shall notify offerors
9 not awarded the contract that the contract has been
10 awarded.”.

11 (b) COMPETITIVE PROPOSALS PROCEDURES.—Para-
12 graph (2) of section 303B(d) of the Federal Property and
13 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),
14 as redesignated by section 1061(b)(3)(B), is amended in
15 the second sentence by striking out “shall promptly no-
16 tify” and inserting in lieu thereof “, within 3 days after
17 the date of contract award, shall notify”.

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

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

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

24 (2) by inserting after subsection (d) the follow-
25 ing new subsection (e):

1 “(e)(1) When a contract is awarded by an executive
2 agency on the basis of competitive proposals, an unsuc-
3 cessful offeror, upon written request received by the execu-
4 tive agency within 7 days after the date of contract award,
5 shall be debriefed and furnished the basis for the selection
6 decision and contract award. An employee of the executive
7 agency shall debrief the offeror within 7 days after receipt
8 of the request by the executive agency.

9 “(2) The debriefing shall provide the offeror with—

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

13 “(B) the overall evaluated cost of the offer of
14 the contractor awarded the contract and the overall
15 evaluated cost of the offer of the debriefed offeror;

16 “(C) the overall ranking of all offers and the
17 total technical and cost scores of all offers;

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

19 “(E) in the case of a proposal that incorporates
20 equipment that is a commercial item, the make and
21 model of the item incorporated in the offer of the
22 contractor awarded the contract; and

23 “(F) reasonable responses to questions posed by
24 the debriefed offeror as to whether source selection
25 procedures set forth in the solicitation, applicable

1 regulations, and other applicable authorities were
2 followed by the executive agency.

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

8 ~~“(A) trade secrets;~~

9 ~~“(B) privileged or confidential manufacturing~~
10 ~~processes and techniques; and~~

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

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

18 ~~“(5) If, within one year after the date of the contract~~
19 ~~award and as a result of a successful procurement protest~~
20 ~~or otherwise, the executive agency seeks to fulfill the re-~~
21 ~~quirement under the contract either on the basis of a new~~
22 ~~solicitation of offers or on the basis of the best and final~~
23 ~~offers considered in the awarding of that contract, the~~
24 ~~agency head shall provide each such offeror with—~~

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

4 “(B) all comparable information with respect to
5 the original offerors.

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

8 **SEC. 1065. PROTEST FILE.**

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

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

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

1 **PART III—ACQUISITIONS GENERALLY**

2 **SEC. 1091. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
 3 **PORT ON COMPETITION.**

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

6 **Subtitle B—Truth in Negotiations**

7 **PART I—ARMED SERVICES ACQUISITIONS**

8 **SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-**
 9 **PLICABILITY.**

10 Section 2306a(a)(1)(A) of title 10, United States
 11 Code, is amended—

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

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

16 **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**
 17 **QUIREMENTS.**

18 Section 2306a(b) of title 10, United States Code, is
 19 amended to read as follows:

20 “(b) EXCEPTIONS.—(1) This section need not be ap-
 21 plied to a contract or subcontract—

22 “(A) for which the price agreed upon is based
 23 on—

24 “(i) adequate price competition;

25 “(ii) established catalog or market prices
 26 of commercial items or of services regularly

1 used for other than Government purposes, as
2 the case may be, that are sold in substantial
3 quantities to the general public; or

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

5 “(B) in an exceptional case when the head of
6 the agency determines that the requirements of this
7 section may be waived and states in writing the rea-
8 sons for such determination.

9 “(2) This section need not be applied to a modifica-
10 tion of a contract or subcontract if—

11 “(A) the contract or subcontract being modified
12 is one to which this section need not be applied by
13 reason of clause (i) or (ii) of paragraph (1)(A); and

14 “(B) the modification would not change the
15 contract or subcontract, as the case may be, from a
16 contract or subcontract for the acquisition of a com-
17 mercial item to a contract or subcontract for the ac-
18 quisition of a noncommercial item.”.

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

21 Section 2306a(c) of title 10, United States Code, is
22 amended by striking out “by subsection (a), such data
23 may nevertheless be required to be submitted by the head
24 of the agency if” and inserting in lieu thereof “by reason

1 of subsection (b), submission of such data may not be re-
2 quired unless”.

3 **SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**
4 **ITEMS.**

5 Section 2306a of title 10, United States Code, is
6 amended—

7 (1) by redesignating subsections (d), (e), (f),
8 and (g) as subsections (e), (f), (g), and (i), respec-
9 tively; and

10 (2) by inserting after subsection (c) the follow-
11 ing new subsection (d):

12 “(d) **ADDITIONAL EXCEPTION PROVISIONS REGARD-**
13 **ING COMMERCIAL ITEMS.**—(1) To the maximum extent
14 practicable, the head of an agency shall—

15 “(A) conduct procurements of commercial items
16 on a competitive basis; and

17 “(B) exercise the authority provided in sub-
18 section (b)(1)(A) to exempt the contracts and sub-
19 contracts under such procurements from the require-
20 ments of subsection (a).

21 “(2) In any case in which it is not practicable to con-
22 duct a procurement of a commercial item on a competitive
23 basis and the procurement is not covered by an exception
24 in subsection (b), the contracting officer may nonetheless

1 exempt a contract or subcontract under the procurement
2 from the requirements of subsection (a) if—

3 ~~“(A) in accordance with regulations implement-~~
4 ~~ing this paragraph, the offeror, contractor, or sub-~~
5 ~~contractor, as the case may be, provides the con-~~
6 ~~tracting officer with information on the price~~
7 ~~charged by such offeror, contractor, or subcontractor~~
8 ~~for the same or similar products in the commercial~~
9 ~~marketplace; and~~

10 ~~“(B) the contracting officer determines in writ-~~
11 ~~ing that the information provided is adequate for~~
12 ~~evaluating the reasonableness of the price of the con-~~
13 ~~tract or subcontract.~~

14 ~~“(3)(A) The Government shall be entitled to a reduc-~~
15 ~~tion in price and the return of any overpayment, with in-~~
16 ~~terest, if an offeror, contractor, or subcontractor provides~~
17 ~~materially inaccurate or misleading information to the~~
18 ~~contracting officer pursuant to paragraph (2).~~

19 ~~“(B) Nothing in subparagraph (A) is intended to pre-~~
20 ~~clude the head of an agency from negotiating any contract~~
21 ~~clause that provides additional price adjustment authority~~
22 ~~for the protection of the Government’s interest in specific~~
23 ~~types of contracts, including multiple ordering agree-~~
24 ~~ments.~~

1 “(4)(A) The head of an agency shall have the right
2 to examine all information provided by an offeror, contrac-
3 tor, or subcontractor pursuant to paragraph (2) and all
4 books and records of such offeror, contractor, or sub-
5 contractor that directly relate to such information in order
6 to determine whether such information is materially inac-
7 curate or misleading.

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

12 **SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CON-**
13 **TRACTOR RECORDS.**

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

18 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
19 TRACTOR RECORDS.—For the purpose of evaluating the
20 accuracy, completeness, and currency of cost or pricing
21 data required to be submitted by this section, the head
22 of an agency shall have the rights provided by section
23 2313 of this title.”.

1 **SEC. 1206. REQUIRED REGULATIONS.**

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

6 “(h) **REQUIRED REGULATIONS.**—(1) The Secretary
7 of Defense shall prescribe regulations identifying the type
8 of procurements for which contracting officers should con-
9 sider requiring the submission of certified cost or pricing
10 data under this section.

11 “(2) The Secretary also shall prescribe regulations
12 concerning the types of information that offerors must
13 submit for a contracting officer to consider in determining
14 whether the price of a procurement to the Government is
15 fair and reasonable when certified cost or pricing data are
16 not required to be submitted under this section because
17 the price of the procurement to the United States is not
18 expected to exceed \$500,000. Such information, at a mini-
19 mum, shall include appropriate information on the prices
20 at which such offeror has previously sold the same or simi-
21 lar products.”.

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

23 Section 2306a of title 10, United States Code, as
24 amended by section 1204, is further amended—

25 (1) in subparagraphs (A)(ii) and (B)(ii) of sub-
26 section (e)(4), by inserting “or, if applicable consist-

1 ent with paragraph (1)(B), another date agreed
 2 upon between the parties” after “(or price of the
 3 modification)”; and

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

8 **SEC. 1208. REPEAL OF SUPERSEDED PROVISION.**

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

11 **PART II—CIVILIAN AGENCY ACQUISITIONS**

12 **SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO**
 13 **ENSURE UNIFORM TREATMENT OF COST OR**
 14 **PRICING DATA.**

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

18 (1) in section 304, by striking out subsection
 19 (d); and

20 (2) by inserting after section 304 the following
 21 new section:

22 “COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

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

1 “(A) An offeror for a prime contract under this
2 title to be entered into using procedures other than
3 sealed bid procedures shall be required to submit
4 cost or pricing data before the award of a contract
5 if—

6 “(i) in the case of a prime contract entered
7 into after the date of the enactment of the Fed-
8 eral Acquisition Streamlining Act of 1993, the
9 price of the contract to the United States is ex-
10 pected to exceed \$500,000; and

11 “(ii) in the case of a prime contract en-
12 tered into on or before the date of the enact-
13 ment of the Federal Acquisition Streamlining
14 Act of 1993, the price of the contract to the
15 United States is expected to exceed \$100,000.

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

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

24 “(ii) in the case of a change or modifica-
25 tion made to a prime contract that was entered

1 into on or before the date of the enactment of
2 the Federal Acquisition Streamlining Act of
3 1993, and that has been modified pursuant to
4 paragraph (6), the price adjustment is expected
5 to exceed \$500,000; and

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

9 “(C) An offeror for a subcontract (at any tier)
10 of a contract under this title shall be required to
11 submit cost or pricing data before the award of the
12 subcontract if the prime contractor and each higher-
13 tier subcontractor have been required to make avail-
14 able cost or pricing data under this section and—

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

19 “(ii) in the case of a subcontract entered
20 into under a prime contract that was entered
21 into on or before the date of the enactment of
22 the Federal Acquisition Streamlining Act of
23 1993, and that has been modified pursuant to
24 paragraph (6), the price of the subcontract is
25 expected to exceed \$500,000; and

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

4 ~~“(D) The subcontractor for a subcontract cov-~~
5 ~~ered by subparagraph (C) shall be required to sub-~~
6 ~~mit cost or pricing data before the pricing of a~~
7 ~~change or modification to the subcontract if—~~

8 ~~“(i) in the case of a change or modification~~
9 ~~to a subcontract referred to in subparagraph~~
10 ~~(C)(i) or (C)(ii), the price adjustment is ex-~~
11 ~~pected to exceed \$500,000; and~~

12 ~~“(ii) in the case of a change or modifica-~~
13 ~~tion to a subcontract referred to in subpara-~~
14 ~~graph (C)(iii), the price adjustment is expected~~
15 ~~to exceed \$100,000.~~

16 ~~“(2) A person required, as an offeror, contractor, or~~
17 ~~subcontractor, to submit cost or pricing data under para-~~
18 ~~graph (1) (or required by the agency head concerned to~~
19 ~~submit such data under subsection (c)) shall be required~~
20 ~~to certify that, to the best of the person’s knowledge and~~
21 ~~belief, the cost or pricing data submitted are accurate,~~
22 ~~complete, and current.~~

23 ~~“(3) Cost or pricing data required to be submitted~~
24 ~~under paragraph (1) (or under subsection (c)), and a cer-~~

1 tification required to be submitted under paragraph (2),
2 shall be submitted—

3 ~~“(A) in the case of a submission by a prime~~
4 ~~contractor (or an offeror for a prime contract), to~~
5 ~~the contracting officer for the contract (or to a des-~~
6 ~~ignated representative of the contracting officer); or~~

7 ~~“(B) in the case of a submission by a sub-~~
8 ~~contractor (or an offeror for a subcontract), to the~~
9 ~~prime contractor.~~

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

13 ~~“(5) For purposes of paragraph (1)(C), a contractor~~
14 ~~or subcontractor granted a waiver under subsection (b)(2)~~
15 ~~shall be considered as having been required to make avail-~~
16 ~~able cost or pricing data under this section.~~

17 ~~“(6)(A) Upon the request of a contractor that was~~
18 ~~required to submit cost or pricing data under paragraph~~
19 ~~(1) in connection with a prime contract entered into on~~
20 ~~or before the date of the enactment of the Federal Acquisi-~~
21 ~~tion Streamlining Act of 1993, the agency head that en-~~
22 ~~tered into such contract shall modify the contract to re-~~
23 ~~flect subparagraphs (B)(ii) and (C)(ii) of paragraph (1).~~
24 ~~All such modifications shall be made without requiring~~
25 ~~consideration.~~

1 ~~“(B) An agency head is not required to modify a con-~~
2 ~~tract under subparagraph (A) if that agency head deter-~~
3 ~~mines that the submission of cost or pricing data with re-~~
4 ~~spect to that contract should be required under subsection~~
5 ~~(c).~~

6 ~~“(b) EXCEPTIONS.—(1) This section need not be ap-~~
7 ~~plied to a contract or subcontract—~~

8 ~~“(A) for which the price agreed upon is based~~
9 ~~on—~~

10 ~~“(i) adequate price competition;~~

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

16 ~~“(iii) prices set by law or regulation; or~~

17 ~~“(B) in an exceptional case when the agency~~
18 ~~head determines that the requirements of this sec-~~
19 ~~tion may be waived and states in writing the reasons~~
20 ~~for such determination.~~

21 ~~“(2) This section need not be applied to a modifica-~~
22 ~~tion of a contract or subcontract if—~~

23 ~~“(A) the contract or subcontract being modified~~
24 ~~is one to which this section need not be applied by~~
25 ~~reason of clause (i) or (ii) of paragraph (1)(A); and~~

1 ~~“(B) the modification would not change the~~
2 ~~contract or subcontract, as the case may be, from a~~
3 ~~contract or subcontract for the acquisition of a com-~~
4 ~~mercial item to a contract or subcontract for the ac-~~
5 ~~quisition of a noncommercial item.~~

6 ~~“(c) AUTHORITY TO REQUIRE COST OR PRICING~~
7 ~~DATA.—When cost or pricing data are not required to be~~
8 ~~submitted by reason of subsection (b), submission of such~~
9 ~~data may not be required unless the agency head deter-~~
10 ~~mines that such data are necessary for the evaluation by~~
11 ~~the agency of the reasonableness of the price of the con-~~
12 ~~tract or subcontract. In any case in which the agency head~~
13 ~~requires such data to be submitted under this subsection,~~
14 ~~the agency head shall document in writing the reasons for~~
15 ~~such requirement.~~

16 ~~“(d) ADDITIONAL EXCEPTION PROVISIONS REGARD-~~
17 ~~ING COMMERCIAL ITEMS.—(1) To the maximum extent~~
18 ~~practicable, an agency head shall—~~

19 ~~“(A) conduct procurements of commercial items~~
20 ~~on a competitive basis; and~~

21 ~~“(B) exercise the authority provided in sub-~~
22 ~~section (b)(1)(A) to exempt the contracts and sub-~~
23 ~~contracts under such procurements from the require-~~
24 ~~ments of subsection (a).~~

1 ~~“(2) In any case in which it is not practicable to con-~~
2 ~~duct a procurement of a commercial item on a competitive~~
3 ~~basis and the procurement is not covered by an exception~~
4 ~~in subsection (b), the contracting officer may nonetheless~~
5 ~~exempt a contract or subcontract under the procurement~~
6 ~~from the requirements of subsection (a) if—~~

7 ~~“(A) in accordance with regulations implement-~~
8 ~~ing this paragraph, the offeror, contractor, or sub-~~
9 ~~contractor, as the case may be, provides the con-~~
10 ~~tracting officer with information on the price~~
11 ~~charged by such offeror, contractor, or subcontractor~~
12 ~~for the same or similar products in the commercial~~
13 ~~marketplace; and~~

14 ~~“(B) the contracting officer determines in writ-~~
15 ~~ing that the information provided is adequate for~~
16 ~~evaluating the reasonableness of the price of the con-~~
17 ~~tract or subcontract.~~

18 ~~“(3)(A) The Government shall be entitled to a reduc-~~
19 ~~tion in price and the return of any overpayment, with in-~~
20 ~~terest, if an offeror, contractor, or subcontractor provides~~
21 ~~materially inaccurate or misleading information to the~~
22 ~~contracting officer pursuant to paragraph (2).~~

23 ~~“(B) Nothing in subparagraph (A) is intended to pre-~~
24 ~~clude an agency head from negotiating any contract clause~~
25 ~~that provides additional price adjustment authority for the~~

1 protection of the Government's interest in specific types
2 of contracts, including multiple ordering agreements.

3 ~~“(4)(A) An agency head shall have the right to exam-~~
4 ~~ine all information provided by an offeror, contractor, or~~
5 ~~subcontractor pursuant to paragraph (2) and all books~~
6 ~~and records of such offeror, contractor, or subcontractor~~
7 ~~that directly relate to such information in order to deter-~~
8 ~~mine whether such information is materially inaccurate or~~
9 ~~misleading.~~

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

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

1 ~~“(B) For the purposes of this section, defective cost~~
2 ~~or pricing data are cost or pricing data which, as of the~~
3 ~~date of agreement on the price of the contract (or another~~
4 ~~date agreed upon between the parties), were inaccurate,~~
5 ~~incomplete, or noncurrent. If for purposes of the preceding~~
6 ~~sentence the parties agree upon a date other than the date~~
7 ~~of agreement on the price of the contract, the date agreed~~
8 ~~upon by the parties shall be as close to the date of agree-~~
9 ~~ment on the price of the contract as is practicable.~~

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

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

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

1 “(i) was the sole source of the property or
2 services procured; or

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

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

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

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

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

23 “(i) the contractor certifies to the contracting
24 officer (or to a designated representative of the con-
25 tracting officer) that, to the best of the contractor’s

1 knowledge and belief, the contractor is entitled to
2 the offset; and

3 ~~“(ii) the contractor proves that the cost or pric-~~
4 ~~ing data were available before the date of agreement~~
5 ~~on the price of the contract (or price of the modi-~~
6 ~~fication), or, if applicable consistent with paragraph~~
7 ~~(1)(B), another date agreed upon between the par-~~
8 ~~ties, and that the data were not submitted as speci-~~
9 ~~fied in subsection (a)(3) before such date.~~

10 ~~“(B) A contractor shall not be allowed to offset an~~
11 ~~amount otherwise authorized to be offset under subpara-~~
12 ~~graph (A) if—~~

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

16 ~~“(ii) the United States proves that, had the cost~~
17 ~~or pricing data referred to in subparagraph (A)(ii)~~
18 ~~been submitted to the United States before the date~~
19 ~~of agreement on the price of the contract (or price~~
20 ~~of the modification) or, if applicable under para-~~
21 ~~graph (1)(B), another date agreed upon between the~~
22 ~~parties, the submission of such cost or pricing data~~
23 ~~would not have resulted in an increase in that price~~
24 ~~in the amount to be offset.~~

1 ~~“(f) INTEREST AND PENALTIES FOR CERTAIN OVER-~~
2 ~~PAYMENTS.—(1) If the United States makes an overpay-~~
3 ~~ment to a contractor under a contract with an executive~~
4 ~~agency subject to this section and the overpayment was~~
5 ~~due to the submission by the contractor of defective cost~~
6 ~~or pricing data, the contractor shall be liable to the United~~
7 ~~States—~~

8 ~~“(A) for interest on the amount of such over-~~
9 ~~payment, to be computed—~~

10 ~~“(i) for the period beginning on the date~~
11 ~~the overpayment was made to the contractor~~
12 ~~and ending on the date the contractor repays~~
13 ~~the amount of such overpayment to the United~~
14 ~~States; and~~

15 ~~“(ii) at the current rate prescribed by the~~
16 ~~Secretary of the Treasury under section 6621~~
17 ~~of the Internal Revenue Code of 1986; and~~

18 ~~“(B) if the submission of such defective data~~
19 ~~was a knowing submission, for an additional amount~~
20 ~~equal to the amount of the overpayment.~~

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

1 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
2 TRACTOR RECORDS.—For the purpose of evaluating the
3 accuracy, completeness, and currency of cost or pricing
4 data required to be submitted by this section, the head
5 of an agency shall have the rights provided by section
6 304B(a)(2).

7 “(h) REQUIRED REGULATIONS.—(1) The head of
8 each executive agency shall prescribe regulations identify-
9 ing the type of procurements for which contracting officers
10 of that executive agency should consider requiring the sub-
11 mission of certified cost or pricing data under this section.

12 “(2) The agency head also shall prescribe regulations
13 concerning the types of information that offerors must
14 submit for a contracting officer to consider in determining
15 whether the price of a procurement to the Government is
16 fair and reasonable when certified cost or pricing data are
17 not required to be submitted under this section because
18 the price of the procurement to the United States is not
19 expected to exceed \$500,000. Such information, at a mini-
20 mum, shall include appropriate information on the prices
21 at which such offeror has previously sold the same or simi-
22 lar products.

23 “(i) COST OR PRICING DATA DEFINED.—In this sec-
24 tion, the term ‘cost or pricing data’ means all facts that,
25 as of the date of agreement on the price of a contract

1 (or the price of a contract modification) or, if applicable
2 consistent with subsection (e)(1)(B), another date agreed
3 upon between the parties, a prudent buyer or seller would
4 reasonably expect to affect price negotiations significantly.
5 Such terms does not include information that is
6 judgmental, but does include the factual information from
7 which a judgment was derived.”.

8 (b) TABLE OF CONTENTS.—The table of contents in
9 the first section of such Act is amended by inserting after
10 the item relating to section 2304 the following:

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

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

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

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

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

20 **SEC. 1301. DELEGATION OF CONTRACTING AUTHORITY.**

21 Section 2356 of title 10, United States Code, is
22 amended to read as follows:

1 **“§ 2356. Contracts: delegations**

2 “(a) AUTHORITY.—The Secretary of a military de-
3 partment may delegate any authority under section 1584,
4 2353, or 2354 of this title to—

5 “(1) the Under Secretary of his department;

6 “(2) an Assistant Secretary of his department;

7 “(3) a Deputy Assistant Secretary of his de-
8 partment; or

9 “(4) except as provided in subsection (b), the
10 chief, and one assistant to the chief, of any technical
11 service, bureau, or office.

12 “(b) LIMITATION.—The authority of the Secretary of
13 a military department under section 2353(b)(3) of this
14 title may not be delegated to a person described in sub-
15 section (a)(4).”.

16 **SEC. 1302. RESEARCH PROJECTS.**

17 (a) AUTHORITY TO CONDUCT BASIC, ADVANCED,
18 AND APPLIED RESEARCH.—Section 2358 of title 10,
19 United States Code, is amended to read as follows:

20 **“§ 2358. Research projects**

21 “(a) AUTHORITY.—The Secretary of Defense or the
22 Secretary of a military department may engage in basic,
23 advanced, and applied research and development projects
24 that—

1 “(1) are necessary to the responsibilities of
2 such Secretary’s department in the field of basic, ad-
3 vanced, and applied research and development; and

4 “(2) either—

5 “(A) relate to weapons systems and other
6 military needs; or

7 “(B) are of potential interest to such de-
8 partment.

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

12 “(1) by contract, cooperative agreement, or
13 other transaction with, or by grant to, educational or
14 research institutions, private businesses, or other
15 agencies of the United States;

16 “(2) by using employees and consultants of the
17 Department of Defense; or

18 “(3) through one or more of the military de-
19 partments.

20 “(c) REQUIREMENT OF POTENTIAL MILITARY IN-
21 TEREST.—Funds appropriated to the Department of De-
22 fense or to a military department may not be used to fi-
23 nance any research project or study unless the project or
24 study is, in the opinion of the Secretary of Defense or the
25 Secretary of that military department, respectively, of po-

1 tential interest to the Department of Defense or to such
2 military department, respectively.”.

3 ~~(b) AUTHORITY RELATED TO ADVANCED RESEARCH~~
4 ~~PROJECTS.—~~

5 ~~(1) REPEAL OF REDUNDANT AUTHORITY.—~~Sec-
6 ~~tion 2371 of such title is amended—~~

7 ~~(A) by striking out subsection (a);~~

8 ~~(B) by redesignating subsections (b), (c),~~
9 ~~(d), (e), (f), and (g) as subsections (a), (b), (c),~~
10 ~~(d), (e), and (f), respectively;~~

11 ~~(C) in subsection (a), as so redesignated—~~

12 ~~(i) in paragraph (1), by striking out~~
13 ~~“subsection (a)” and inserting in lieu~~
14 ~~thereof “section 2358 of this title”; and~~

15 ~~(ii) in paragraph (2), by striking out~~
16 ~~“subsection (e)” and inserting in lieu~~
17 ~~thereof “subsection (d)”;~~ and

18 ~~(D) in subsection (e), as redesignated by~~
19 ~~subparagraph (B)—~~

20 ~~(i) in paragraph (4), by striking out~~
21 ~~“subsection (b)” and inserting in lieu~~
22 ~~thereof “subsection (a)”;~~ and

23 ~~(ii) in paragraph (5), by striking out~~
24 ~~“subsection (e)” and inserting in lieu~~
25 ~~thereof “subsection (d)”.~~

1 (2) CONSISTENCY OF TERMINOLOGY.—Such
2 section, as amended by paragraph (1), is further
3 amended—

4 (A) in subsection (c)(1), by inserting “and
5 development” after “research” both places it
6 appears;

7 (B) in subsections (d) and (e)(3), by strik-
8 ing out “advanced research” and inserting in
9 lieu thereof “research and development”; and

10 (C) in subsection (e)(1), by striking out
11 “advanced research is” and inserting in lieu
12 thereof “research and development are”.

13 (c) REDUNDANT AND OBSOLETE AUTHORITY FOR
14 THE ARMY.—

15 (1) REPEAL.—Section 4503 of title 10, United
16 States Code, is repealed.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 431 of such title
19 is amended by striking out the item relating to sec-
20 tion 4503.

21 (d) REDUNDANT AND OBSOLETE AUTHORITY FOR
22 THE AIR FORCE.—

23 (1) REPEAL.—Section 9503 of title 10, United
24 States Code, is repealed.

1 (2) CLERICAL AMENDMENT.—The table of sec-
2 tions at the beginning of chapter 931 of such title
3 is amended by striking out the item relating to sec-
4 tion 9503.

5 **SEC. 1303. ELIMINATION OF INFLEXIBLE TERMINOLOGY**
6 **REGARDING COORDINATION AND COMMU-**
7 **NICATION OF DEFENSE RESEARCH ACTIVI-**
8 **TIES.**

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

11 (1) in subsection (b)(5), by striking out “mile-
12 stone 0, milestone I, and milestone II decisions” and
13 inserting in lieu thereof “acquisition program deci-
14 sions”; and

15 (2) in subsection (c), by striking out para-
16 graphs (2), (3), and (4) and inserting in lieu thereof
17 the following:

18 “(2) The term ‘acquisition program decisions’
19 has the meaning given such term in regulations pre-
20 scribed by the Secretary of Defense for the purposes
21 of this section.”.

1 **Subtitle D—Procurement Protests**

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

3 **GENERAL**

4 **SEC. 1401. REVIEW OF PROTESTS AND EFFECT ON CON-**
 5 **TRACTS PENDING DECISION.**

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

8 (1) in subsection (b)—

9 (A) in paragraph (1), by striking out “one
 10 working day of” and inserting in lieu thereof
 11 “one day after”; and

12 (B) in paragraph (2)—

13 (i) in subparagraph (A), by striking
 14 out “25 working days from” and inserting
 15 in lieu thereof “25 days after”; and

16 (ii) in subparagraph (C), by striking
 17 out “10 working days from” and inserting
 18 in lieu thereof “25 days after”; and

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

22 (b) REFERENCE TO HEAD OF CONTRACTING ACTIV-
 23 ITY.—Subsections (c)(2) and (e) of such section are
 24 amended by striking out “head of the procuring activity”

1 and inserting in lieu thereof “head of the contracting ac-
2 tivity”.

3 ~~(c) SUSPENSION OF PERFORMANCE.~~—Subsection (d)
4 of such section is amended to read as follows:

5 “(d)(1) A contractor awarded a Federal agency con-
6 tract may, during the period described in paragraph (5),
7 begin performance of the contract and engage in any relat-
8 ed activities that result in obligations being incurred by
9 the United States under the contract upon receipt from
10 the contracting officer responsible for the award of the
11 contract of an authorization to proceed with performance
12 of the contract.

13 “(2) The contracting officer may withhold an author-
14 ization to proceed with performance of the contract during
15 the period described in paragraph (5) if the contracting
16 officer determines in writing that—

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

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

20 “(3) Unless the contracting officer makes the deter-
21 minations described in paragraph (2), performance of the
22 contract may be authorized in the written notice of award
23 transmitted to the contractor pursuant to paragraph (3)
24 or (4)(B) of section 2305(b) of title 10 or subsection (c)
25 or (d)(2) of section 303B of the Federal Property and Ad-

1 ministrative Services Act of 1949 (41 U.S.C. 253b), as
2 the case may be.

3 ~~“(4)(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 (5)—~~

6 ~~“(i) the contracting officer may not authorize~~
7 ~~performance of the contract to begin while the pro-~~
8 ~~test 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 di-~~
12 ~~rect the contractor to cease performance under the~~
13 ~~contract and to suspend any related activities that~~
14 ~~may result in additional obligations being incurred~~
15 ~~by the United 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 contracting activity may au-~~
20 ~~thorize the performance of the contract (notwithstanding~~
21 ~~a protest of which the Federal agency has notice under~~
22 ~~this section)—~~

23 ~~“(i) upon a written finding that—~~

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

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

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

8 “(5) The period referred to in paragraphs (2) and
9 (4)(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 7 days after the debriefing
15 date offered to an unsuccessful offeror for any de-
16 briefing that is requested and, when requested, is re-
17 quired.”.

18 **SEC. 1402. 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 “125
23 days after”;

24 (2) in paragraph (2), by striking out “45 cal-
25 endar days from” and inserting “65 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 that adds a new ground of pro-
6 test should be resolved, to the maximum extent prac-
7 ticable, within the time limit established under paragraph
8 (1) of this subsection for final decision of the initial pro-
9 test. If an amended protest cannot be resolved within such
10 time limit, the Comptroller General may resolve the
11 amended protest through the express option under para-
12 graph (2) of this subsection.”.

13 (b) GAO RECOMMENDATIONS ON PROTESTS.—

14 (1) IMPLEMENTATION OF RECOMMENDA-
15 TIONS.—Section 3554 of title 31, United States
16 Code, is amended—

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

19 “(3) If the Federal agency fails to implement fully
20 the recommendations of the Comptroller General under
21 this subsection with respect to a solicitation for a contract
22 or an award or proposed award of a contract within 60
23 days after receiving the recommendations, the head of the
24 contracting activity responsible for that contract shall re-

1 port such failure to the Comptroller General not later than
 2 5 working days after the end of such 60-day period.”;

3 ~~(B)~~ by striking out subsection (c) and in-
 4 serting in lieu thereof the following:

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

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

14 “~~(B)~~ bid and proposal preparation.

15 “~~(2)~~ No party may be paid, pursuant to a rec-
 16 ommendation made under the authority of paragraph
 17 (1)—

18 “~~(A)~~ costs for consultant and expert witness
 19 fees that exceed the rates provided under section
 20 504(b)(1)(A) of title 5 for expert witnesses; or

21 “~~(B)~~ costs for attorney’s fees that exceed the
 22 rates provided for attorneys under section
 23 504(b)(1)(A) of title 5.

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

4 ~~“(A) pay the costs promptly out of funds appro-~~
5 ~~priated by section 1304 of this title for the payment~~
6 ~~of judgments and reimburse that appropriation ac-~~
7 ~~count out of available funds or out of additional~~
8 ~~funds appropriated for such Federal agency to make~~
9 ~~such reimbursement; or~~

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

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

23 ~~(C) by striking out subsection (e) and in-~~
24 ~~serting in lieu thereof the following:~~

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

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

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

17 “(i) private relief legislation;

18 “(ii) legislative rescission or cancellation of
19 funds;

20 “(iii) further investigation by the Congress;

21 or

22 “(iv) other action.

23 “(2) Not later than January 31 of each year, the
24 Comptroller General shall transmit to the Congress a re-
25 port containing a summary of each instance in which a

1 Federal agency did not fully implement a recommendation
2 of the Comptroller General under subsection (b) or (c)
3 during the preceding year. The report shall also describe
4 each instance in which a final decision in a protest was
5 not rendered within 125 days after the date the protest
6 is submitted to the Comptroller General.”.

7 (2) REQUIREMENT FOR PAYMENT IN ACCORD-
8 ANCE WITH PRIOR GAO DETERMINATIONS.—
9 Amounts to which the Comptroller General declared
10 an interested party to be entitled under section 3554
11 of title 31, United States Code, as in effect imme-
12 diately before the enactment of this Act, shall, if not
13 paid or otherwise satisfied by the Federal agency
14 concerned before the date of the enactment of this
15 Act, be paid promptly from the appropriation made
16 by section 1304 of such title for the payment of
17 judgments. The Federal agency shall reimburse that
18 appropriation account out of available funds or out
19 of additional funds appropriated for such Federal
20 agency to make such reimbursement. If the Federal
21 agency is unable to make the reimbursement out of
22 available funds, the head of such agency shall imme-
23 diately take such action as may be necessary to
24 transmit to Congress a request for an appropriation
25 of additional funds to make such reimbursement.

1 (c) REFERENCE TO HEAD OF CONTRACTING ACTIV-
2 ITY.—Subsections (b)(2) and (d) of section 3554 of title
3 31, United States Code, are amended by striking out
4 “head of the procuring activity” and inserting in lieu
5 thereof “head of the contracting activity”.

6 **SEC. 1403. REGULATIONS.**

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

9 (1) by redesignating subsection (b) as sub-
10 section (d); and

11 (2) by inserting after subsection (a) the follow-
12 ing new subsection (b):

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

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

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

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

22 “(B) in the case of a filing of a paper at
23 the General Accounting Office or a Federal
24 agency, such last day is a day on which weather
25 or other conditions make the General Account-

1 ing Office or Federal agency inaccessible, in
2 which event the next day that is not a Satur-
3 day, Sunday, or legal holiday shall be in-
4 cluded.”.

5 (b) ELECTRONIC FILINGS AND DISSEMINATIONS.—
6 Such section, as amended by subsection (a), is further
7 amended by inserting after subsection (b) the following
8 new subsection:

9 “(c) The Comptroller General may prescribe proce-
10 dures for the electronic filing and dissemination of docu-
11 ments and information required under this subchapter. In
12 prescribing such procedures, the Comptroller General shall
13 consider the ability of all parties to achieve electronic ac-
14 cess to such documents and records.”.

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

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

20 **SEC. 1421. NONEXCLUSIVITY OF REMEDIES.**

21 Section 3556 of title 31, United States Code, is
22 amended by striking out “a district court of the United
23 States or the United States Claims Court” in the first sen-
24 tence and inserting in lieu thereof “the United States
25 Court of Federal Claims”.

1 **SEC. 1422. JURISDICTION OF THE UNITED STATES COURT**
2 **OF FEDERAL CLAIMS.**

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

6 (1) by redesignating subsection (b) as sub-
7 section (d);

8 (2) in subsection (a)—

9 (A) by striking out “(a)(1)” and inserting
10 in lieu thereof “(a) CLAIMS AGAINST THE
11 UNITED STATES.—”;

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

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

16 (3) by inserting after subsection (b), as des-
17 ignated by paragraph (2)(B), the following new sub-
18 section (c):

19 “(c) BID PROTESTS.—(1) The United States Court
20 of Federal Claims has exclusive jurisdiction to render
21 judgment on an action by an interested party objecting
22 to a solicitation by a Federal agency for bids or proposals
23 for a proposed contract or to a proposed award or the
24 award of a contract. The court has jurisdiction to enter-
25 tain such an action without regard to whether suit is insti-
26 tuted before or after the contract is awarded.

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

4 “(3) In exercising jurisdiction under this subsection,
5 the court shall give due regard to the interests of national
6 defense and national security and the need for expeditious
7 resolution of the action.

8 “(4) The district courts of the United States do not
9 have jurisdiction of any action referred to in paragraph
10 (1).”.

11 (b) CLERICAL AMENDMENTS.—

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

15 (2) TABLE OF SECTIONS.—The table of sections
16 at the beginning of chapter 91 of title 28, United
17 States Code, is amended by striking out the item re-
18 lating to section 1491 and inserting in lieu thereof
19 the following:

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

1 **PART III—PROTESTS IN PROCUREMENTS OF**
2 **AUTOMATIC DATA PROCESSING**

3 **SEC. 1431. REVOCATION OF DELEGATIONS OF PROCURE-**
4 **MENT AUTHORITY.**

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

14 **SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMIN-**
15 **ISTRATION BOARD OF CONTRACT APPEALS.**

16 The first sentence of section 111(f)(1) of the Federal
17 Property and Administrative Services Act of 1949 (40
18 U.S.C. 759(f)(1)) is amended to read as follows: “Upon
19 request of an interested party in connection with any pro-
20 curement that is subject to this section (including any
21 such procurement that is subject to delegation of procure-
22 ment authority), the board of contract appeals of the Gen-
23 eral Services Administration (hereafter in this subsection
24 referred to as the ‘board’) shall review, as provided in this
25 subsection, any decision by a Federal agency that is al-

1 leged to violate a statute, a regulation, or the conditions
2 of a delegation of procurement authority.”.

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

4 (a) **SUSPENSION OF PROCUREMENT AUTHORITY.—**

5 Section 111(f) of the Federal Property and Administrative
6 Services Act of 1949 (40 U.S.C. 759(f)) is amended in
7 paragraph (3) by striking out subparagraph (A) and in-
8 serting in lieu thereof the following:

9 “(A)(i) If, with respect to an award of a contract,
10 the board receives notice of a protest under this subsection
11 within the period described in clause (ii), the board shall,
12 at the request of an interested party, hold a hearing to
13 determine whether the board should suspend the procure-
14 ment authority of the Administrator or the Administra-
15 tor’s delegation of procurement authority for the protested
16 procurement on an interim basis until the board can de-
17 cide the protest.

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

21 “(I) the tenth day after the date of contract
22 award; or

23 “(II) the seventh day after the debriefing date
24 offered to an unsuccessful offeror for any debriefing
25 that is requested and, when requested, is required.

1 ~~“(iii) The board shall hold the requested hearing~~
2 ~~within 7 days after the date of the filing of the protest~~
3 ~~or, in the case of a request for debriefing under the provi-~~
4 ~~sions of section 2305(b)(5) of title 10, United States Code,~~
5 ~~or section 303B(e) of this Act, within 7 days after the~~
6 ~~later of the date of the filing of the protest or the date~~
7 ~~of the debriefing.”.~~

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

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

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

17 **SEC. 1434. DISMISSALS OF PROTESTS.**

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

22 ~~“(C) The board may dismiss a protest that the board~~
23 ~~determines—~~

24 ~~“(i) is frivolous;~~

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

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

3 **SEC. 1435. AWARD OF COSTS.**

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

6 “(C) Whenever the board makes such a determina-
7 tion, it may, in accordance with section 1304 of title 31,
8 United States Code, further declare an appropriate pre-
9 vailing party to be entitled to the cost of filing and pursu-
10 ing the protest (including reasonable attorney’s fees and
11 consultant and expert witness fees), and bid and proposal
12 preparation. However, no party may be declared entitled
13 to costs for consultant and expert witness fees that exceed
14 the rates provided under section 504(b)(1)(A) of title 5,
15 United States Code, for expert witnesses or to costs for
16 attorney’s fees that exceed the rates provided for attorneys
17 under section 504(b)(1)(A) of title 5, United States
18 Code.”.

19 **SEC. 1436. DISMISSAL AGREEMENTS.**

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

24 “(D) Any agreement that provides for the dismissal
25 of a protest and involves a direct or indirect expenditure

1 of appropriated funds shall be submitted to the board and
2 shall be made a part of the public record (subject to any
3 protective order considered appropriate by the board) be-
4 fore dismissal of the protest. If a Federal agency is a party
5 to a settlement agreement, the submission of the agree-
6 ment submitted to the board shall include a memorandum,
7 signed by the contracting officer concerned, that describes
8 in detail the procurement, the grounds for protest, the
9 Federal Government's position regarding the grounds for
10 protest, the terms of the settlement, and the agency's posi-
11 tion regarding the propriety of the award or proposed
12 award of the contract at issue in the protest.

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

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

21 Section 111(f)(6)(C) of the Federal Property and Ad-
22 ministrative Services Act of 1949 (40 U.S.C.
23 759(f)(6)(C)) is amended by striking out “a district court
24 of the United States or the United States Claims Court”

1 in the third sentence and inserting in lieu thereof “the
2 United States Court of Federal Claims”.

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

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

8 “(7)(A) The board shall adopt and issue such rules
9 and procedures as may be necessary to the expeditious dis-
10 position of protests filed under the authority of this sub-
11 section.

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

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

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

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

21 “(II) in the case of a filing of a paper at
22 the board, such last day is a day on which
23 weather or other conditions make the board or
24 Federal agency inaccessible, in which event the

1 next day that is not a Saturday, Sunday, or
2 legal holiday shall be included.

3 ~~“(C) The procedures may provide for electronic filing
4 and dissemination of documents and information required
5 under this subsection and in so providing shall consider
6 the ability of all parties to achieve electronic access to such
7 documents and records.~~

8 ~~“(D) The procedures shall provide that if the board
9 expressly finds that a protest or a portion of a protest
10 is frivolous or has not been brought or pursued in good
11 faith, or that any person has willfully abused the board’s
12 process during the course of a protest, the board may im-
13 pose appropriate sanctions. Such sanctions may include
14 the dismissal of the protest and an award to any other
15 party of costs (including reasonable attorneys’ fees not to
16 exceed the rates provided for pursuant to paragraph
17 (5)(C)) incurred as a result of such protest or conduct.”.~~

18 **SEC. 1439. DEFINITIONS.**

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

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

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

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

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

8 ~~“(iv) to a termination or cancellation of an~~
9 ~~award of such a contract, if that termination or~~
10 ~~cancellation is alleged to be based in whole or~~
11 ~~in part on improprieties concerning the award~~
12 ~~of the contract;”.~~

13 (b) ~~PREVAILING PARTY.~~—Section 111(f)(9) of such
14 Act is amended by adding at the end the following new
15 subparagraph:

16 ~~“(C) the term ‘prevailing party’, with respect to~~
17 ~~a determination of the board under paragraph~~
18 ~~(5)(B) that a challenged action of a Federal agency~~
19 ~~violates a statute or regulation or the conditions of~~
20 ~~a delegation of procurement authority issued pursu-~~
21 ~~ant to this section, means a party that demonstrated~~
22 ~~such violation.”.~~

1 **SEC. 1440. OVERSIGHT OF ACQUISITION OF AUTOMATIC**
2 **DATA PROCESSING EQUIPMENT BY FEDERAL**
3 **AGENCIES.**

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

7 “(h)(1) The Administrator shall collect and compile
8 data regarding the procurement of automatic data proc-
9 essing equipment under this section. The data collected
10 and compiled shall include, at a minimum, with regard to
11 each procurement the following:

12 “(A) The procuring agency.

13 “(B) The contractor.

14 “(C) The automatic data processing equipment
15 and services procured.

16 “(D) The manufacturer of the equipment pro-
17 cured.

18 “(E) The amount of the contract, to the extent
19 that the amount is not proprietary information.

20 “(F) The type of contract used.

21 “(G) The extent of competition for award.

22 “(H) Compatibility restrictions.

23 “(I) Significant modifications of the contract.

24 “(J) Contract price, to the extent that the price
25 is not proprietary information.

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

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

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

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

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

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

1 **“§ 2311. Delegation**

2 “(a) IN GENERAL.—Except to the extent expressly
3 prohibited by another provision of law, the head of an
4 agency may delegate, subject to his direction, to any other
5 officer or official of that agency, any power under this
6 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
11 other agency, and to facilitate joint procurement by those
12 agencies—

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 as-
18 sign procurement responsibilities from one agency to
19 another of those agencies or to an officer or civilian
20 employee of another of those agencies; and

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

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

1 military department participating in a joint acquisition
2 program approved by the Under Secretary of Defense for
3 Acquisition from terminating or substantially reducing its
4 participation in such program without the approval of the
5 Under Secretary.

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

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

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

20 (b) CONFORMING REPEAL.—(1) Section 2308 of title
21 10, United States Code, is repealed.

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

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

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

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

5 **“(a) INDIVIDUAL OR CLASS DETERMINATIONS AND**
6 **DECISIONS AUTHORIZED.**—Determinations and decisions
7 required to be made under this chapter by the head of
8 an agency may be made for an individual purchase or con-
9 tract or, except to the extent expressly prohibited by an-
10 other provision of law, for a class of purchases or con-
11 tracts. Such determinations and decisions are final.

12 **“(b) WRITTEN FINDINGS REQUIRED.**—(1) Each de-
13 termination or decision under section 2306(g)(1), 2307(c),
14 or 2313(c) of this title shall be based on a written finding
15 by the person making the determination or decision. The
16 finding shall set out facts and circumstances that support
17 the determination or decision.

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

22 **SEC. 1504. UNDEFINITE CONTRACTUAL ACTIONS: RE-**
23 **STRICTIONS.**

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

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

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

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

7 (4) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~SEC. 1507. REPEAL OF EXECUTED REQUIREMENT RELAT-~~
2 ~~ING TO CERTIFICATE OF INDEPENDENT~~
3 ~~PRICE DETERMINATION IN CERTAIN DEPART-~~
4 ~~MENT OF DEFENSE CONTRACT SOLICITA-~~
5 ~~TIONS.~~

6 Section 821 of Public Law 101-189 (103 Stat. 1503)
7 is repealed.

8 **PART II—CIVILIAN AGENCY ACQUISITIONS**

9 **SEC. 1551. DEFINITIONS.**

10 Section 309(c) of the Federal Property and Adminis-
11 trative Services Act of 1949 (41 U.S.C. 259(c)) is amend-
12 ed by striking out “and ‘supplies’” and inserting in lieu
13 thereof “‘supplies’, ‘commercial item’, ‘nondevelopmental
14 item’, and ‘simplified acquisition threshold’”.

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

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

18 (1) by redesignating sections 309 and 310 as
19 sections 312 and 313, respectively; and

20 (2) by inserting after section 308 the following
21 new section 309:

22 “DELEGATION

23 “SEC. 309. (a) IN GENERAL.—Except to the extent
24 expressly prohibited by another provision of law, an agen-
25 cy head may delegate, subject to his direction, to any other

1 officer or official of that agency, any power under this
2 title.

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

8 ~~“(1) an agency head may, within his executive~~
9 ~~agency, delegate functions and assign responsibilities~~
10 ~~relating to procurement;~~

11 ~~“(2) the heads of two or more executive agen-~~
12 ~~cies may by agreement delegate procurement func-~~
13 ~~tions and assign procurement responsibilities from~~
14 ~~one executive agency to another of those executive~~
15 ~~agencies or to an officer or civilian employee of an-~~
16 ~~other of those executive agencies; and~~

17 ~~“(3) the heads of two or more executive agen-~~
18 ~~cies may create joint or combined offices to exercise~~
19 ~~procurement functions and responsibilities.”.~~

20 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

21 Title III of the Federal Property and Administrative
22 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended
23 by section 1552, is further amended by inserting after sec-
24 tion 309 the following new section 310:

1 “DETERMINATIONS AND DECISIONS

2 “SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINA-
3 TIONS AND DECISIONS AUTHORIZED.—Determinations
4 and decisions required to be made under this title by an
5 agency head may be made for an individual purchase or
6 contract or, except to the extent expressly prohibited by
7 another provision of law, for a class of purchases or con-
8 tracts. Such determinations and decisions are final.

9 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-
10 termination under section 305(c) shall be based on a writ-
11 ten finding by the person making the determination or de-
12 cision. The finding shall set out facts and circumstances
13 that support the determination or decision.

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

18 **SEC. 1554. UNDEFINITEZED CONTRACTUAL ACTIONS: RE-**
19 **STRICTIONS.**

20 Title III of the Federal Property and Administrative
21 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended
22 by section 1553, is further amended by inserting after sec-
23 tion 310 the following new section:

24 “UNDEFINITEZED CONTRACTUAL ACTIONS: RESTRICTIONS

25 “SEC. 311. (a) IN GENERAL.—An agency head may
26 not enter into an undefinitezed contractual action unless

1 the request to the agency head for authorization of the
2 contractual action includes a description of the anticipated
3 effect on requirements of the executive agency concerned
4 if a delay is incurred for purposes of determining contrac-
5 tual terms, specifications, and price before performance is
6 begun under the contractual action.

7 “(b) LIMITATIONS ON OBLIGATIONS OF FUNDS.—(1)
8 A contracting officer of an executive agency may not enter
9 into an undefinitized contractual action unless the con-
10 tractual action provides for agreement upon contractual
11 terms, specifications, and price by the earlier of—

12 “(A) the end of the 180-day period beginning
13 on the date on which the contractor submits a quali-
14 fying proposal (as defined in subsection (f)) to de-
15 finitize the contractual terms, specifications, and
16 price; or

17 “(B) the date on which the amount of funds ob-
18 ligated under the contractual action is equal to more
19 than 50 percent of the negotiated overall ceiling
20 price for the contractual action.

21 “(2) Except as provided in paragraph (3), the con-
22 tracting officer for an undefinitized contractual action
23 may not obligate with respect to such contractual action
24 an amount that is equal to more than 50 percent of the
25 negotiated overall ceiling price until the contractual terms,

1 specifications, and price are definitized for such contrac-
2 tual action.

3 ~~“(3) If a contractor submits a qualifying proposal (as~~
4 ~~defined in subsection (f)) to definitize an undefinitized~~
5 ~~contractual action before an amount equal to more than~~
6 ~~50 percent of the negotiated overall ceiling price is obli-~~
7 ~~gated on such action, the contracting officer for such ac-~~
8 ~~tion may not obligate with respect to such contractual ac-~~
9 ~~tion an amount that is equal to more than 75 percent of~~
10 ~~the negotiated overall ceiling price until the contractual~~
11 ~~terms, specifications, and price are definitized for such~~
12 ~~contractual action.~~

13 ~~“(4) This subsection does not apply to an~~
14 ~~undefinitized contractual action for the purchase of initial~~
15 ~~spares.~~

16 ~~“(c) INCLUSION OF NON-URGENT REQUIRE-~~
17 ~~MENTS.—Requirements for spare parts and support~~
18 ~~equipment that are not needed on an urgent basis may~~
19 ~~not be included in an undefinitized contractual action for~~
20 ~~spare parts and support equipment that are needed on an~~
21 ~~urgent basis unless the agency head approves such inclu-~~
22 ~~sion as being—~~

23 ~~“(1) good business practice; and~~

24 ~~“(2) in the best interests of the United States.~~

1 “(d) MODIFICATION OF SCOPE.—The scope of an
2 undefinitized contractual action under which performance
3 has begun may not be modified unless the agency head
4 approves such modification as being—

5 “(1) good business practice; and

6 “(2) in the best interests of the United States.

7 “(e) ALLOWABLE PROFIT.—An agency head shall en-
8 sure that the profit allowed on an undefinitized contrac-
9 tual action for which the final price is negotiated after
10 a substantial portion of the performance required is com-
11 pleted reflects—

12 “(1) the possible reduced cost risk of the con-
13 tractor with respect to costs incurred during per-
14 formance of the contract before the final price is ne-
15 gotiated; and

16 “(2) the reduced cost risk of the contractor
17 with respect to costs incurred during performance of
18 the remaining portion of the contract.

19 “(f) DEFINITIONS.—In this section:

20 “(1) The term ‘undefinitized contractual action’
21 means a new procurement action entered into by an
22 agency head for which the contractual terms, speci-
23 fications, or price are not agreed upon before per-
24 formance is begun under the action. Such term does

1 not include contractual actions with respect to the
2 following:

3 “(A) Purchases in an amount not in excess
4 of the amount of the simplified acquisition
5 threshold.

6 “(B) Congressionally mandated long-lead
7 procurement contracts.

8 “(2) The term ‘qualifying proposal’ means a
9 proposal that contains sufficient information to en-
10 able the agency head concerned to conduct complete
11 and meaningful audits of the information contained
12 in the proposal and of any other information that
13 the agency head is entitled to review in connection
14 with the contract, as determined by the contracting
15 officer.”.

16 **SEC. 1555. REPEAL OF AMENDMENTS TO UNCODIFIED**
17 **TITLE.**

18 The following provisions of law are repealed:

19 (1) Section 532 of Public Law 101-509 (104
20 Stat. 1470) and the matter set out in quotes in that
21 section.

22 (2) Section 529 of Public Law 102-393 (106
23 Stat. 1761) and the matter inserted and added by
24 that section.

1 **TITLE II—CONTRACT**
2 **ADMINISTRATION**
3 **Subtitle A—Contract Payment**
4 **PART I—ARMED SERVICES ACQUISITIONS**

5 **SEC. 2001. CONTRACT FINANCING.**

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

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

11 **“§ 2307. Contract financing”;**

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

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

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

21 (5) by striking out “(d)(1) The Secretary of
22 Defense” and inserting in lieu thereof “(e) CONDI-
23 TIONS FOR PROGRESS PAYMENTS.—(1) The Sec-
24 retary of Defense”; 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) FINANCING POLICY.—Such section, as amended
5 by subsection (a), is further amended by inserting after
6 the section heading the following new subsection (a):

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

19 (c) TERMINOLOGY CORRECTION.—Such section, as
20 amended by subsection (a)(2), is further amended in sub-
21 section (b)(2) by striking out “bid”.

22 (d) EFFECTIVE DATE OF LIEN RELATED TO AD-
23 VANCE PAYMENTS.—Such section, as amended by sub-
24 section (a)(4), is further amended in subsection (d) by in-
25 serting before the period at the end of the third sentence

1 the following: “and is effective immediately upon the first
2 advancement of funds without filing, notice, or any other
3 action by the United States”.

4 (e) CONDITIONS FOR PROGRESS PAYMENTS.—Such
5 section, as amended by subsection (a)(5), is further
6 amended in subsection (e)—

7 (1) in the first sentence of paragraph (1), by
8 striking out “work, which” and all that follows
9 through “accomplished” and inserting in lieu thereof
10 “work accomplished that meets standards estab-
11 lished under the contract”; and

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

14 “(3) This subsection applies to a contract for an
15 amount equal to or greater than the simplified acquisition
16 threshold.”.

17 (f) NAVY CONTRACTS.—Such section, as amended by
18 subsection (a)(5), is further amended by inserting after
19 subsection (e) the following new subsection (f):

20 “(f) CERTAIN NAVY CONTRACTS.—(1) The Secretary
21 of the Navy shall provide that the rate for progress pay-
22 ments on any contract awarded by the Secretary for re-
23 pair, maintenance, or overhaul of a naval vessel shall be
24 not less than—

1 ~~“(A) 95 percent, in the case of firms considered~~
2 ~~to be small businesses; and~~

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

4 ~~“(2) The Secretary of the Navy may advance to pri-~~
5 ~~vate salvage companies such funds as the Secretary con-~~
6 ~~siders necessary to provide for the immediate financing~~
7 ~~of salvage operations. Advances under this paragraph shall~~
8 ~~be made on terms that the Secretary considers adequate~~
9 ~~for the protection of the United States.~~

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

17 ~~(g) CONFORMING AND CLERICAL AMENDMENTS.—~~

18 ~~(1) CROSS REFERENCE.—Such section, as~~
19 ~~amended by subsection (a), is further amended in~~
20 ~~subsections (c) and (d) by striking out “subsection~~
21 ~~(a)” and inserting in lieu thereof “subsection (b)”.~~

22 ~~(2) TABLE OF CONTENTS.—The table of sec-~~
23 ~~tions at the beginning of chapter 137 of title 10,~~
24 ~~United States Code, is amended by striking out the~~

1 item relating to section 2307 and inserting in lieu
2 thereof the following:

“2307. Contract financing.”.

3 ~~(h) REPEAL OF SUPERSEDED PROVISIONS.—~~

4 ~~(1) PROGRESS PAYMENTS UNDER CERTAIN~~
5 ~~NAVY CONTRACTS.—~~

6 ~~(A) REPEAL.—~~Section 7312 of title 10,
7 ~~United States Code,~~ is repealed.

8 ~~(B) CLERICAL AMENDMENT.—~~The table of
9 sections at the beginning of chapter 633 of such
10 title is amended by striking out the item relat-
11 ing to section 7312.

12 ~~(2) ADVANCEMENT OF PAYMENTS FOR NAVY~~
13 ~~SALVAGE OPERATIONS.—~~

14 ~~(A) REPEAL.—~~Section 7364 of such title is
15 ~~repealed.~~

16 ~~(B) CLERICAL AMENDMENT.—~~The table of
17 sections at the beginning of chapter 637 of such
18 title is amended by striking out the item relat-
19 ing to section 7364.

20 ~~(3) PARTIAL PAYMENTS UNDER NAVY CON-~~
21 ~~TRACTS.—~~

22 ~~(A) REPEAL.—~~Section 7521 of such title is
23 ~~repealed.~~

24 ~~(B) CLERICAL AMENDMENT.—~~The table of
25 sections at the beginning of chapter 645 of such

1 title is amended by striking out the item relat-
2 ing to section 7521.

3 ~~(4) NAVY RESEARCH CONTRACTS.—Section~~
4 ~~7522 of title 10, United States Code, is amended—~~

5 ~~(A) by striking out subsection (b); and~~

6 ~~(B) by redesignating subsection (c) as sub-~~
7 ~~section (b).~~

8 **SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.**

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

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

14 **PART II—CIVILIAN AGENCY ACQUISITIONS**

15 **SEC. 2051. CONTRACT FINANCING.**

16 ~~(a) REORGANIZATION OF PRINCIPAL AUTHORITY~~
17 ~~PROVISION.—Section 305 of the Federal Property and~~
18 ~~Administrative Services Act of 1949 (41 U.S.C. 255) is~~
19 ~~amended—~~

20 ~~(1) by striking out the section heading and in-~~
21 ~~serting in lieu thereof the following:~~

22 ~~“CONTRACT FINANCING”;~~

23 ~~(2) by striking out “(a) Any executive agency”~~
24 ~~and inserting in lieu thereof “(b) PAYMENT AU-~~
25 ~~THORITY.—Any executive agency”;~~

1 (3) by striking out “(b) Payments” and insert-
2 ing in lieu thereof “(c) PAYMENT AMOUNT.—Pay-
3 ments”; and

4 (4) by striking out “(c) Advance payments” and
5 inserting in lieu thereof “(d) SECURITY FOR AD-
6 VANCE PAYMENTS.—Advance payments”.

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

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

22 (c) TERMINOLOGY CORRECTION.—Such section, as
23 amended by subsection (a)(2), is further amended in sub-
24 section (b)(2) by striking out “bid”.

1 ~~(d) EFFECTIVE DATE OF LIEN RELATED TO AD-~~
2 ~~VANCE PAYMENTS.—Such section, as amended by sub-~~
3 ~~section (a)(4), is further amended in subsection (d) by in-~~
4 ~~serting before the period at the end of the third sentence~~
5 ~~the following: “and is effective immediately upon the first~~
6 ~~advancement of funds without filing, notice, or any other~~
7 ~~action by the United States”.~~

8 ~~(e) REVISION OF CIVILIAN AGENCY PROVISION TO~~
9 ~~ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-~~
10 ~~MENTS.—~~

11 ~~(1) IN GENERAL.—Such section, as amended by~~
12 ~~subsection (a), is further amended by adding at the~~
13 ~~end the following:~~

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

23 ~~“(2) The agency head shall ensure that progress pay-~~
24 ~~ments referred to in paragraph (1) are not made for more~~
25 ~~than 80 percent of the work accomplished under the con-~~

1 tract so long as the agency head has not made the contrac-
2 tual terms, specifications, and price definite.

3 ~~“(3) This subsection applies to a contract for an~~
4 ~~amount equal to or greater than the simplified acquisition~~
5 ~~threshold.~~

6 ~~“(f) ACTION IN CASE OF FRAUD.—(1) In any case~~
7 ~~in which the remedy coordination official of an executive~~
8 ~~agency finds that there is substantial evidence that the~~
9 ~~request of a contractor for advance, partial, or progress~~
10 ~~payment under a contract awarded by that executive agen-~~
11 ~~cy is based on fraud, the remedy coordination official shall~~
12 ~~recommend that the agency head reduce or suspend fur-~~
13 ~~ther payments to such contractor.~~

14 ~~“(2) An agency head receiving a recommendation~~
15 ~~under paragraph (1) in the case of a contractor’s request~~
16 ~~for payment under a contract shall determine whether~~
17 ~~there is substantial evidence that the request is based on~~
18 ~~fraud. Upon making such a determination, the agency~~
19 ~~head may reduce or suspend further payments to the con-~~
20 ~~tractor under such contract.~~

21 ~~“(3) The extent of any reduction or suspension of~~
22 ~~payments by an agency head under paragraph (2) on the~~
23 ~~basis of fraud shall be reasonably commensurate with the~~
24 ~~anticipated loss to the United States resulting from the~~
25 ~~fraud.~~

1 “(4) A written justification for each decision of the
2 agency head whether to reduce or suspend payments
3 under paragraph (2), and for each recommendation re-
4 ceived by the agency head in connection with such deci-
5 sion, shall be prepared and be retained in the files of the
6 executive agency.

7 “(5) Each agency head shall prescribe procedures to
8 ensure that, before the agency head decides to reduce or
9 suspend payments in the case of a contractor under para-
10 graph (2), the contractor is afforded notice of the pro-
11 posed reduction or suspension and an opportunity to sub-
12 mit matters to the head of the agency in response to such
13 proposed reduction or suspension.

14 “(6) Not later than 180 days after the date on which
15 an agency head reduces or suspends payments to a con-
16 tractor under paragraph (2), the remedy coordination offi-
17 cial of the executive agency shall—

18 “(A) review the determination of fraud on
19 which the reduction or suspension is based; and

20 “(B) transmit a recommendation to the agency
21 head whether the suspension or reduction should
22 continue.

23 “(7) Each agency head who receives recommenda-
24 tions made by a remedy coordination official of the execu-
25 tive agency to reduce or suspend payments under para-

1 graph (2) during a fiscal year shall prepare for such year
2 a report that contains the recommendations, the actions
3 taken on the recommendations and the reasons for such
4 actions, and an assessment of the effects of such actions
5 on the Federal Government. Any such report shall be
6 available to any Member of Congress upon request.

7 “(8) An agency head may not delegate responsibilities
8 under this subsection to any person in a position below
9 level IV of the Executive Schedule.

10 “(9) In this subsection, the term ‘remedy coordina-
11 tion official’, with respect to an executive agency, means
12 the person or entity in that executive agency who coordi-
13 nates within that executive agency the administration of
14 criminal, civil, administrative, and contractual remedies
15 resulting from investigations of fraud or corruption related
16 to procurement activities.’”

17 (2) RELATIONSHIP TO PROMPT PAYMENT RE-
18 QUIREMENTS.—The amendments made by para-
19 graph (1) are not intended to impair or modify pro-
20 cedures required by the provisions of chapter 39 of
21 title 31, United States Code, and the regulations is-
22 sued pursuant to such provisions of law, that relate
23 to progress payment requests, as such procedures
24 are in effect on the date of the enactment of this
25 Act.

1 (f) CONFORMING AND CLERICAL AMENDMENTS.—

2 (1) REFERENCE.—Section 305 of the Federal
3 Property and Administrative Services Act of 1949,
4 as amended by subsection (a), is further amended in
5 subsections (c) and (d) by striking out “subsection
6 (a)” and inserting in lieu thereof “subsection (b)”.

7 (2) TABLE OF CONTENTS.—The table of con-
8 tents in the first section of such Act is amended by
9 striking out the item relating to section 305 and in-
10 serting in lieu thereof the following:

“Sec. 305. Contract financing.”.

11 **Subtitle B—Cost Principles**

12 **PART I—ARMED SERVICES ACQUISITIONS**

13 **SEC. 2101. ALLOWABLE CONTRACT COSTS.**

14 (a) COMPTROLLER GENERAL EVALUATION.—Sub-
15 section (f) of section 2324 of title 10, United States Code,
16 is amended to read as follows:

17 “(f)(1) The Comptroller General shall periodically
18 evaluate the implementation of this section by the Sec-
19 retary of Defense. Such evaluation shall consider the ex-
20 tent to which—

21 “(A) the implementation is consistent with con-
22 gressional intent;

23 “(B) the implementation achieves the objective
24 of eliminating unallowable costs charged to covered
25 contracts; and

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 141 of such title is amended
3 by striking out the item relating to section 2382.

4 **PART II—CIVILIAN AGENCY ACQUISITIONS**

5 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

6 (a) REVISION OF CIVILIAN AGENCY PROVISION TO
7 ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—
8 Section 306 of the Federal Property and Administrative
9 Services Act of 1949 (41 U.S.C. 256) is amended to read
10 as follows:

11 “ALLOWABLE COSTS

12 “SEC. 306. (a) INDIRECT COST THAT VIOLATES A
13 FAR COST PRINCIPLE.—The head of an executive agency
14 shall require that a covered contract provide that if the
15 contractor submits to the executive agency a proposal for
16 settlement of indirect costs incurred by the contractor for
17 any period after such costs have been accrued and if that
18 proposal includes the submission of a cost which is unal-
19 lowable because the cost violates a cost principle in the
20 Federal Acquisition Regulation or an executive agency’s
21 supplement to the Federal Acquisition Regulation, the cost
22 shall be disallowed.

23 “(b) PENALTY FOR VIOLATION OF COST PRIN-
24 CIPLE.—(1) If the agency head determines that a cost
25 submitted by a contractor in its proposal for settlement
26 is expressly unallowable under a cost principle referred to

1 in subsection (a) that defines the allowability of specific
2 selected costs, the agency head shall assess a penalty
3 against the contractor in an amount equal to—

4 “(A) the amount of the disallowed cost allo-
5 cated to covered contracts for which a proposal for
6 settlement of indirect costs has been submitted; plus

7 “(B) interest (to be computed based on regula-
8 tions issued by the agency head) to compensate the
9 United States for the use of any funds which a con-
10 tractor has been paid in excess of the amount to
11 which the contractor was entitled.

12 “(2) If the agency head determines that a proposal
13 for settlement of indirect costs submitted by a contractor
14 includes a cost determined to be unallowable in the case
15 of such contractor before the submission of such proposal,
16 the agency head shall assess a penalty against the contrac-
17 tor in an amount equal to two times the amount of the
18 disallowed cost allocated to covered contracts for which a
19 proposal for settlement of indirect costs has been submit-
20 ted.

21 “(c) WAIVER OF PENALTY.—The agency head shall
22 prescribe regulations providing for a penalty under sub-
23 section (b) to be waived in the case of a contractor’s pro-
24 posal for settlement of indirect costs when—

1 ~~“(1) the contractor withdraws the proposal be-~~
2 ~~fore the formal initiation of an audit of the proposal~~
3 ~~by the Federal Government and resubmits a revised~~
4 ~~proposal;~~

5 ~~“(2) the amount of unallowable costs subject to~~
6 ~~the penalty is insignificant; or~~

7 ~~“(3) the contractor demonstrates, to the con-~~
8 ~~tracting officer’s satisfaction, that—~~

9 ~~“(A) it has established appropriate policies~~
10 ~~and personnel training and an internal control~~
11 ~~and review system that provide assurances that~~
12 ~~unallowable costs subject to penalties are pre-~~
13 ~~cluded from being included in the contractor’s~~
14 ~~proposal for settlement of indirect costs; and~~

15 ~~“(B) the unallowable costs subject to the~~
16 ~~penalty were inadvertently incorporated into the~~
17 ~~proposal.~~

18 ~~“(d) APPLICABILITY OF CONTRACT DISPUTES PRO-~~
19 ~~CEDURE TO DISALLOWANCE OF COST AND ASSESSMENT~~
20 ~~OF PENALTY.—An action of an agency head under sub-~~
21 ~~section (a) or (b)—~~

22 ~~“(1) shall be considered a final decision for the~~
23 ~~purposes of section 6 of the Contract Disputes Act~~
24 ~~of 1978 (41 U.S.C. 605); and~~

1 “(2) is appealable in the manner provided in
2 section 7 of such Act.

3 “(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The
4 following costs are not allowable under a covered contract:

5 “(A) Costs of entertainment, including amuse-
6 ment, diversion, and social activities, and any costs
7 directly associated with such costs (such as tickets
8 to shows or sports events, meals, lodging, rentals,
9 transportation, and gratuities).

10 “(B) Costs incurred to influence (directly or in-
11 directly) legislative action on any matter pending be-
12 fore Congress or a State legislature.

13 “(C) Costs incurred in defense of any civil or
14 criminal fraud proceeding or similar proceeding (in-
15 cluding filing of any false certification) brought by
16 the United States where the contractor is found lia-
17 ble or had pleaded nolo contendere to a charge of
18 fraud or similar proceeding (including filing of a
19 false certification).

20 “(D) Payments of fines and penalties resulting
21 from violations of, or failure to comply with, Fed-
22 eral, State, local, or foreign laws and regulations, ex-
23 cept when incurred as a result of compliance with
24 specific terms and conditions of the contract or spe-
25 cific written instructions from the contracting officer

1 authorizing in advance such payments in accordance
2 with applicable regulations of the agency head con-
3 cerned.

4 ~~“(E) Costs of membership in any social, dining,
5 or country club or organization.~~

6 ~~“(F) Costs of alcoholic beverages.~~

7 ~~“(G) Contributions or donations, regardless of
8 the recipient.~~

9 ~~“(H) Costs of advertising designed to promote
10 the contractor or its products.~~

11 ~~“(I) Costs of promotional items and memora-
12 bilia, including models, gifts, and souvenirs.~~

13 ~~“(J) Costs for travel by commercial aircraft
14 which exceed the amount of the standard commercial
15 fare.~~

16 ~~“(K) Costs incurred in making any payment
17 (commonly known as a ‘golden parachute payment’)
18 which is—~~

19 ~~“(i) in an amount in excess of the normal
20 severance pay paid by the contractor to an em-
21 ployee upon termination of employment; and~~

22 ~~“(ii) is paid to the employee contingent
23 upon, and following, a change in management
24 control over, or ownership of, the contractor or
25 a substantial portion of the contractor’s assets.~~

1 ~~“(L) Costs of commercial insurance that pro-~~
2 ~~ects against the costs of the contractor for correc-~~
3 ~~tion of the contractor’s own defects in materials or~~
4 ~~workmanship.~~

5 ~~“(M) Costs of severance pay paid by the con-~~
6 ~~tractor to foreign nationals employed by the contrac-~~
7 ~~tor under a service contract performed outside the~~
8 ~~United States, to the extent that the amount of sev-~~
9 ~~erance pay paid in any case exceeds the amount paid~~
10 ~~in the industry involved under the customary or pre-~~
11 ~~vailing practice for firms in that industry providing~~
12 ~~similar services in the United States, as determined~~
13 ~~under regulations prescribed by the agency head~~
14 ~~concerned.~~

15 ~~“(N) Costs of severance pay paid by the con-~~
16 ~~tractor to a foreign national employed by the con-~~
17 ~~tractor under a service contract performed in a for-~~
18 ~~ign country if the termination of the employment of~~
19 ~~the foreign national is the result of the closing of,~~
20 ~~or the curtailment of activities at, a United States~~
21 ~~facility in that country at the request of the govern-~~
22 ~~ment of that country.~~

23 ~~“(O) Costs incurred by a contractor in connec-~~
24 ~~tion with any criminal, civil, or administrative pro-~~

1 ceeding commenced by the United States or a State,
2 to the extent provided in subsection (k).

3 ~~“(2)(A) Pursuant to regulations prescribed by the~~
4 ~~head of the executive agency concerned and subject to the~~
5 ~~availability of appropriations, the agency head, in award-~~
6 ~~ing a covered contract, may waive the application of the~~
7 ~~provisions of paragraphs (1)(M) and (1)(N) to that con-~~
8 ~~tract if the agency head determines that—~~

9 ~~“(i) the application of such provisions to the~~
10 ~~contract would adversely affect the continuation of a~~
11 ~~program, project, or activity that provides significant~~
12 ~~support services for employees of the executive agen-~~
13 ~~cy posted outside the United States;~~

14 ~~“(ii) the contractor has taken (or has estab-~~
15 ~~lished plans to take) appropriate actions within the~~
16 ~~contractor’s control to minimize the amount and~~
17 ~~number of incidents of the payment of severance pay~~
18 ~~by the contractor to employees under the contract~~
19 ~~who are foreign nationals; and~~

20 ~~“(iii) the payment of severance pay is necessary~~
21 ~~in order to comply with a law that is generally appli-~~
22 ~~cable to a significant number of businesses in the~~
23 ~~country in which the foreign national receiving the~~
24 ~~payment performed services under the contract or is~~

1 necessary to comply with a collective bargaining
2 agreement.

3 ~~“(B) The head of the executive agency concerned~~
4 ~~shall include in the solicitation for a covered contract a~~
5 ~~statement indicating—~~

6 ~~“(i) that a waiver has been granted under sub-~~
7 ~~paragraph (A) for the contract; or~~

8 ~~“(ii) whether the agency head will consider~~
9 ~~granting such a waiver, and, if the agency head will~~
10 ~~consider granting a waiver, the criteria to be used in~~
11 ~~granting the waiver.~~

12 ~~“(C) The agency head shall make the final determina-~~
13 ~~tion regarding whether to grant a waiver under subpara-~~
14 ~~graph (A) with respect to a covered contract before award~~
15 ~~of the contract.~~

16 ~~“(3) The head of each executive agency concerned~~
17 ~~shall prescribe regulations to implement this section with~~
18 ~~respect to contracts of that executive agency. Such regula-~~
19 ~~tions may establish appropriate definitions, exclusions,~~
20 ~~limitations, and qualifications.~~

21 ~~“(f) REQUIRED REGULATIONS.—(1) The Federal Ac-~~
22 ~~quisition Regulation referred to in section 25(c)(1) of the~~
23 ~~Office of Federal Procurement Policy Act (41 U.S.C.~~
24 ~~421(c)(1)) shall contain provisions on the allowability of~~
25 ~~contractor costs. Such provisions shall define in detail and~~

1 in specific terms those costs which are unallowable, in
2 whole or in part, under covered contracts. The regulations
3 shall, at a minimum, clarify the cost principles applicable
4 to contractor costs of the following:

5 “(A) Air shows.

6 “(B) Membership in civic, community, and pro-
7 fessional organizations.

8 “(C) Recruitment.

9 “(D) Employee morale and welfare.

10 “(E) Actions to influence (directly or indirectly)
11 executive branch action on regulatory and contract
12 matters (other than costs incurred in regard to con-
13 tract proposals pursuant to solicited or unsolicited
14 bids).

15 “(F) Community relations.

16 “(G) Dining facilities.

17 “(H) Professional and consulting services, in-
18 cluding legal services.

19 “(I) Compensation.

20 “(J) Selling and marketing.

21 “(K) Travel.

22 “(L) Public relations.

23 “(M) Hotel and meal expenses.

24 “(N) Expense of corporate aircraft.

25 “(O) Company furnished automobiles.

1 ~~“(P) Advertising.~~

2 ~~“(2) The Federal Acquisition Regulation shall require~~
3 ~~that a contracting officer not resolve any questioned costs~~
4 ~~until the contracting officer has obtained—~~

5 ~~“(A) adequate documentation with respect to~~
6 ~~such costs; and~~

7 ~~“(B) the opinion of the executive agency’s con-~~
8 ~~tract auditor on the allowability of such costs.~~

9 ~~“(3) The Federal Acquisition Regulation shall pro-~~
10 ~~vide that, to the maximum extent practicable, an executive~~
11 ~~agency’s contract auditor be present at any negotiation or~~
12 ~~meeting with the contractor regarding a determination of~~
13 ~~the allowability of indirect costs of the contractor.~~

14 ~~“(4) The Federal Acquisition Regulation shall require~~
15 ~~that all categories of costs designated in the report of an~~
16 ~~executive agency’s contract auditor as questioned with re-~~
17 ~~spect to a proposal for settlement be resolved in such a~~
18 ~~manner that the amount of the individual questioned costs~~
19 ~~that are paid will be reflected in the settlement.~~

20 ~~“(g) APPLICABILITY OF REQUIRED REGULATIONS.—~~
21 ~~The regulations required to be prescribed under sub-~~
22 ~~sections (e) and (f)(1) shall require, to the maximum ex-~~
23 ~~tent practicable, that such regulations apply to all sub-~~
24 ~~contractors of a covered contract.~~

1 ~~“(h) CONTRACTOR CERTIFICATION REQUIRED.—(1)~~
2 A proposal for settlement of indirect costs applicable to
3 a covered contract shall include a certification by an offi-
4 cial of the contractor that, to the best of the certifying
5 official’s knowledge and belief, all indirect costs included
6 in the proposal are allowable. Any such certification shall
7 be in a form prescribed by the agency head concerned.

8 ~~“(2) The agency head concerned may, in an excep-~~
9 tional case, waive the requirement for certification under
10 paragraph (1) in the case of any contract if the agency
11 head—

12 ~~“(A) determines in such case that it would be~~
13 in the interest of the United States to waive such
14 certification; and

15 ~~“(B) states in writing the reasons for that de-~~
16 termination and makes such determination available
17 to the public.

18 ~~“(i) PENALTIES FOR SUBMISSION OF COST KNOWN~~
19 AS NOT ALLOWABLE.—The submission to an executive
20 agency of a proposal for settlement of costs for any period
21 after such costs have been accrued that includes a cost
22 that is expressly specified by statute or regulation as being
23 unallowable, with the knowledge that such cost is unallow-
24 able, shall be subject to the provisions of section 287 of

1 title 18, United States Code, and section 3729 of title 31,
2 United States Code.

3 ~~“(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—~~

4 In a proceeding before a board of contract appeals, the
5 United States Court of Federal Claims, or any other Fed-
6 eral court in which the reasonableness of indirect costs for
7 which a contractor seeks reimbursement from the United
8 States is in issue, the burden of proof shall be upon the
9 contractor to establish that those costs are reasonable.

10 ~~“(k) PROCEEDING COSTS NOT ALLOWABLE.—(1)~~

11 Except as otherwise provided in this subsection, costs in-
12 curred by a contractor in connection with any criminal,
13 civil, or administrative proceeding commenced by the
14 United States or a State are not allowable as reimbursable
15 costs under a covered contract if the proceeding (A) re-
16 lates to a violation of, or failure to comply with, a Federal
17 or State statute or regulation, and (B) results in a disposi-
18 tion described in paragraph (2).

19 ~~“(2) A disposition referred to in paragraph (1)(B) is~~
20 ~~any of the following:~~

21 ~~“(A) In the case of a criminal proceeding, a~~
22 ~~conviction (including a conviction pursuant to a plea~~
23 ~~of nolo contendere) by reason of the violation or fail-~~
24 ~~ure referred to in paragraph (1).~~

1 “(B) In the case of a civil or administrative
2 proceeding involving an allegation of fraud or similar
3 misconduct, a determination of contractor liability
4 on the basis of the violation or failure referred to in
5 paragraph (1).

6 “(C) In the case of any civil or administrative
7 proceeding, the imposition of a monetary penalty by
8 reason of the violation or failure referred to in para-
9 graph (1).

10 “(D) A final decision—

11 “(i) to debar or suspend the contractor,

12 “(ii) to rescind or void the contract, or

13 “(iii) to terminate the contract for default,
14 by reason of the violation or failure referred to in
15 paragraph (1).

16 “(E) A disposition of the proceeding by consent
17 or compromise if such action could have resulted in
18 a disposition described in subparagraph (A), (B),
19 (C), or (D).

20 “(3) In the case of a proceeding referred to in para-
21 graph (1) that is commenced by the United States and
22 is resolved by consent or compromise pursuant to an
23 agreement entered into by a contractor and the United
24 States, the costs incurred by the contractor in connection
25 with such proceeding that are otherwise not allowable as

1 reimbursable costs under such paragraph may be allowed
2 to the extent specifically provided in such agreement.

3 ~~“(4) In the case of a proceeding referred to in para-~~
4 ~~graph (1) that is commenced by a State, the agency head~~
5 ~~that awarded the covered contract involved in the proceed-~~
6 ~~ing may allow the costs incurred by the contractor in con-~~
7 ~~nection with such proceeding as reimbursable costs if the~~
8 ~~agency head determines, under regulations prescribed by~~
9 ~~such agency head, that the costs were incurred as a result~~
10 ~~of (A) a specific term or condition of the contract, or (B)~~
11 ~~specific written instructions of the agency.~~

12 ~~“(5)(A) Except as provided in subparagraph (C),~~
13 ~~costs incurred by a contractor in connection with a crimi-~~
14 ~~nal, civil, or administrative proceeding commenced by the~~
15 ~~United States or a State in connection with a covered con-~~
16 ~~tract may be allowed as reimbursable costs under the con-~~
17 ~~tract if such costs are not disallowable under paragraph~~
18 ~~(1), but only to the extent provided in subparagraph (B).~~

19 ~~“(B)(i) The amount of the costs allowable under sub-~~
20 ~~paragraph (A) in any case may not exceed the amount~~
21 ~~equal to 80 percent of the amount of the costs incurred,~~
22 ~~to the extent that such costs are determined to be other-~~
23 ~~wise allowable and allocable under the Federal Acquisition~~
24 ~~Regulation.~~

1 “(ii) Regulations issued for the purpose of clause (i)
2 shall provide for appropriate consideration of the complex-
3 ity of procurement litigation, generally accepted principles
4 governing the award of legal fees in civil actions involving
5 the United States as a party, and such other factors as
6 may be appropriate.

7 “(C) In the case of a proceeding referred to in sub-
8 paragraph (A), contractor costs otherwise allowable as re-
9 imburseable costs under this paragraph are not allowable
10 if (i) such proceeding involves the same contractor mis-
11 conduct alleged as the basis of another criminal, civil, or
12 administrative proceeding, and (ii) the costs of such other
13 proceeding are not allowable under paragraph (1).

14 “(6) In this subsection:

15 “(A) The term ‘proceeding’ includes an inves-
16 tigation.

17 “(B) The term ‘costs’, with respect to a pro-
18 ceeding—

19 “(i) means all costs incurred by a contrac-
20 tor, whether before or after the commencement
21 of any such proceeding; and

22 “(ii) includes—

23 “(I) administrative and clerical ex-
24 penses;

1 ~~“(II) the cost of legal services, includ-~~
2 ~~ing legal services performed by an em-~~
3 ~~ployee of the contractor;~~

4 ~~“(III) the cost of the services of ac-~~
5 ~~countants and consultants retained by the~~
6 ~~contractor; and~~

7 ~~“(IV) the pay of directors, officers,~~
8 ~~and employees of the contractor for time~~
9 ~~devoted by such directors, officers, and em-~~
10 ~~ployees to such proceeding.~~

11 ~~“(C) The term ‘penalty’ does not include res-~~
12 ~~titution, reimbursement, or compensatory damages.~~

13 ~~“(I) PERIODIC EVALUATION OF IMPLEMENTATION.—~~

14 ~~(1) The Comptroller General shall periodically evaluate~~
15 ~~the implementation of this section by the heads of execu-~~
16 ~~tive agencies. Such evaluation shall consider the extent to~~
17 ~~which—~~

18 ~~“(A) the implementation is consistent with con-~~
19 ~~gressional intent;~~

20 ~~“(B) the implementation achieves the objective~~
21 ~~of eliminating unallowable costs charged to covered~~
22 ~~contracts; and~~

23 ~~“(C) the implementation (as well as the provi-~~
24 ~~sions of this section and the regulations prescribed~~

1 under this section) could be improved or strength-
2 ened.

3 ~~“(2) The Comptroller General shall submit to the~~
4 ~~Committees on Governmental Affairs and on Appropria-~~
5 ~~tions of the Senate and the Committees on Government~~
6 ~~Operation and on Appropriations of the House of Rep-~~
7 ~~resentatives a report on such evaluation within 90 days~~
8 ~~after the head of any executive agency publishes in the~~
9 ~~Federal Register regulations that make substantive~~
10 ~~changes in regulations pertaining to allowable costs under~~
11 ~~covered contracts.~~

12 ~~“(m) COVERED CONTRACT DEFINED.—In this sec-~~
13 ~~tion, the term ‘covered contract’ means a contract for an~~
14 ~~amount in excess of \$500,000 that is entered into by an~~
15 ~~executive agency, except that such term does not include~~
16 ~~a fixed-price contract without cost incentives.”.~~

17 ~~(b) CLERICAL AMENDMENT.—The table of contents~~
18 ~~in the first section of such Act is amended by striking out~~
19 ~~the item relating to section 306 and inserting in lieu there-~~
20 ~~of the following:~~

~~“Sec. 306. Allowable costs.”.~~

21 **PART III—ACQUISITIONS GENERALLY**

22 **SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-**
23 **TORS.**

24 Section 24 of the Office of Federal Procurement Pol-
25 icy Act (41 U.S.C. 420) is repealed.

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

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY**
5 **TO EXAMINE RECORDS OF CONTRACTORS.**

6 (a) AUTHORITY.—

7 (1) IN GENERAL.—Section 2313 of title 10,
8 United States Code, is amended to read as follows:

9 **“§ 2313. Examination of records of contractor**

10 “(a) AGENCY AUTHORITY.—The head of an agency,
11 acting through an authorized representative—

12 “(1) is entitled to inspect the plant and audit
13 the records of—

14 “(A) a contractor performing a cost-reim-
15 bursement, incentive, time-and-materials, labor-
16 hour, or price-redeterminable contract, or any
17 combination of such contracts, made by that
18 agency under this chapter; and

19 “(B) a subcontractor performing any sub-
20 contract under such a contract or combination
21 of contracts; and

22 “(2) shall, for the purpose of evaluating the ac-
23 curacy, completeness, and currency of cost or pricing
24 data required to be submitted pursuant to section
25 2306a of this title with respect to a contract or sub-

1 contract, have the right to examine all records of the
2 contractor or subcontractor related to—

3 “(A) the proposal for the contract or sub-
4 contract;

5 “(B) the discussions conducted on the pro-
6 posal;

7 “(C) pricing of the contract or subcontract;
8 or

9 “(D) performance of the contract or sub-
10 contract.

11 “(b) SUBPOENA POWER.—(1) The Director of the
12 Defense Contract Audit Agency (or any successor agency)
13 may require by subpoena the production of records of a
14 contractor, access to which is provided to the Secretary
15 of Defense by subsection (a).

16 “(2) Any such subpoena, in the case of contumacy
17 or refusal to obey, shall be enforceable by order of an ap-
18 propriate United States district court.

19 “(3) The authority provided by paragraph (1) may
20 not be redelegated.

21 “(4) The Director (or any successor official) shall
22 submit an annual report to the Secretary of Defense on
23 the exercise of such authority during the preceding year
24 and the reasons why such authority was exercised in any
25 instance. The Secretary shall forward a copy of each such

1 report to the Committees on Armed Services of the Senate
2 and House of Representatives.

3 ~~“(c) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-~~
4 ~~cept as provided in paragraph (2), each contract awarded~~
5 ~~after using procedures other than sealed bid procedures~~
6 ~~shall provide that the Comptroller General and his rep-~~
7 ~~resentatives are entitled to examine any records of the~~
8 ~~contractor, or any of its subcontractors, that directly per-~~
9 ~~tain to, and involve transactions relating to, the contract~~
10 ~~or subcontract.~~

11 ~~“(2) Paragraph (1) does not apply to a contract or~~
12 ~~subcontract with a foreign contractor or foreign sub-~~
13 ~~contractor if the head of the agency concerned determines,~~
14 ~~with the concurrence of the Comptroller General or his~~
15 ~~designee, that the application of that paragraph to the~~
16 ~~contract or subcontract would not be in the public interest.~~
17 ~~However, the concurrence of the Comptroller General or~~
18 ~~his designee is not required—~~

19 ~~“(A) where the contractor or subcontractor is a~~
20 ~~foreign government or agency thereof or is precluded~~
21 ~~by the laws of the country involved from making its~~
22 ~~records available for examination; and~~

23 ~~“(B) where the head of the agency determines,~~
24 ~~after taking into account the price and availability of~~
25 ~~the property and services from United States~~

1 sources, that the public interest would be best served
2 by not applying paragraph (1).

3 ~~“(d) LIMITATION.—The right of the head of an agen-~~
4 ~~cy under subsection (a), and the right of the Comptroller~~
5 ~~General under subsection (c), with respect to a contract~~
6 ~~or subcontract shall expire three years after final payment~~
7 ~~under such contract or subcontract.~~

8 ~~“(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—~~
9 ~~This section is inapplicable with respect to the following~~
10 ~~contracts:~~

11 ~~“(1) Contracts for utility services at rates not~~
12 ~~exceeding those established to apply uniformly to the~~
13 ~~public, plus any applicable reasonable connection~~
14 ~~charge.~~

15 ~~“(f) RECORDS DEFINED.—In this section, the term~~
16 ~~‘records’ includes books, documents, accounting proce-~~
17 ~~dures and practices, and other data, regardless of type and~~
18 ~~regardless of whether such items are in written form, in~~
19 ~~the form of computer data, or in any other form.”.~~

20 ~~(2) CLERICAL AMENDMENT.—The item relating~~
21 ~~to such section in the table of sections at the begin-~~
22 ~~ning of chapter 137 of title 10, United States Code,~~
23 ~~is amended to read as follows:~~

~~“2313. Examination of records of contractor.”.~~

24 ~~(b) REPEAL OF SUPERSEDED PROVISION.—~~

1 ~~“(B) a subcontractor performing any sub-~~
2 ~~contract under such a contract or combination~~
3 ~~of contracts; and~~

4 ~~“(2) shall, for the purpose of evaluating the ac-~~
5 ~~curacy, completeness, and currency of cost or pricing~~
6 ~~data required to be submitted pursuant to section~~
7 ~~304A with respect to a contract or subcontract, have~~
8 ~~the right to examine all records of the contractor or~~
9 ~~subcontractor related to—~~

10 ~~“(A) the proposal for the contract or sub-~~
11 ~~contract;~~

12 ~~“(B) the discussions conducted on the pro-~~
13 ~~posal;~~

14 ~~“(C) pricing of the contract or subcontract;~~
15 ~~or~~

16 ~~“(D) performance of the contract or sub-~~
17 ~~contract.~~

18 ~~“(b) SUBPOENA POWER.—(1) The agency head may~~
19 ~~require by subpoena the production of records of a con-~~
20 ~~tractor, access to which is provided by subsection (a).~~

21 ~~“(2) Any such subpoena, in the case of contumacy~~
22 ~~or refusal to obey, shall be enforceable by order of an ap-~~
23 ~~propriate United States district court.~~

24 ~~“(3) The authority provided by paragraph (1) may~~
25 ~~not be delegated.~~

1 ~~“(4) In the year following a year in which the head~~
2 ~~of an executive agency exercises the authority provided in~~
3 ~~paragraph (1), the agency head shall submit to the Com-~~
4 ~~mittee on Governmental Affairs of the Senate and the~~
5 ~~Committee on Government Operations of the House of~~
6 ~~Representatives a report on the exercise of such authority~~
7 ~~during such preceding year and the reasons why such au-~~
8 ~~thority was exercised in any instance.~~

9 ~~“(c) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-~~
10 ~~cept as provided in paragraph (2), each contract awarded~~
11 ~~after using procedures other than sealed bid procedures~~
12 ~~shall provide that the Comptroller General and his rep-~~
13 ~~resentatives are entitled to examine any records of the~~
14 ~~contractor, or any of its subcontractors, that directly per-~~
15 ~~tain to, and involve transactions relating to, the contract~~
16 ~~or subcontract.~~

17 ~~“(2) Paragraph (1) does not apply to a contract or~~
18 ~~subcontract with a foreign contractor or foreign sub-~~
19 ~~contractor if the agency head concerned determines, with~~
20 ~~the concurrence of the Comptroller General or his des-~~
21 ~~ignee, that the application of that paragraph to the con-~~
22 ~~tract or subcontract would not be in the public interest.~~
23 ~~However, the concurrence of the Comptroller General or~~
24 ~~his designee is not required—~~

1 “(A) where the contractor or subcontractor is a
2 foreign government or agency thereof or is precluded
3 by the laws of the country involved from making its
4 records available for examination; and

5 “(B) where the agency head determines, after
6 taking into account the price and availability of the
7 property and services from United States sources,
8 that the public interest would be best served by not
9 applying paragraph (1).

10 “(d) LIMITATION.—The right of an agency head
11 under subsection (a), and the right of the Comptroller
12 General under subsection (c), with respect to a contract
13 or subcontract shall expire three years after final payment
14 under such contract or subcontract.

15 “(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—
16 This section is inapplicable with respect to the following
17 contracts:

18 “(1) Contracts for utility services at rates not
19 exceeding those established to apply uniformly to the
20 public, plus any applicable reasonable connection
21 charge.

22 “(f) RECORDS DEFINED.—In this section, the term
23 ‘records’ includes books, documents, accounting proce-
24 dures and practices, and other data, regardless of type and

1 **Subtitle E—Administration of Con-**
2 **tract Provisions Relating to**
3 **Price, Delivery, and Product**
4 **Quality**

5 **PART I—ARMED SERVICES ACQUISITIONS**

6 **SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND**
7 **SHIP SPARE PARTS; QUALITY CONTROL.**

8 (a) ~~REPEAL.~~—Section 2383 of title 10, United States
9 Code, is repealed.

10 (b) ~~CLERICAL AMENDMENT.~~—The table of sections
11 at the beginning of chapter 141 of such title is amended
12 by striking out the item relating to section 2383.

13 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**
14 **ON SYSTEMS.**

15 Section 2403(h) of title 10, United States Code, is
16 amended—

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

19 (2) by inserting after paragraph (1) the follow-
20 ing new paragraph (2):

21 “(2) The regulations shall include the following:

22 “(A) Guidelines for negotiating contractor guar-
23 antees that are reasonable and cost effective, as de-
24 termined on the basis of the likelihood of defects and
25 the estimated cost of correcting such defects.

1 ~~“(B) Procedures for administering contractor~~
2 ~~guarantees.~~

3 ~~“(C) Guidelines for determining the cases in~~
4 ~~which it may be appropriate to waive the require-~~
5 ~~ments of this section.”.~~

6 **SEC. 2403. REPEAL OF REQUIREMENT FOR COMPLETE DE-**
7 **LIVERY OF SUBSISTENCE SUPPLIES AT SPE-**
8 **CIFIC PLACE UPON INSPECTION.**

9 ~~(a) ARMY CONTRACTS.—~~

10 ~~(1) REPEAL.—Section 4534 of title 10, United~~
11 ~~States Code, is repealed.~~

12 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
13 ~~tions at the beginning of chapter 433 of such title~~
14 ~~is amended by striking out the item relating to sec-~~
15 ~~tion 4534.~~

16 ~~(b) AIR FORCE CONTRACTS.—~~

17 ~~(1) REPEAL.—Section 9534 of title 10, United~~
18 ~~States Code, is repealed.~~

19 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
20 ~~tions at the beginning of chapter 933 of such title~~
21 ~~is amended by striking out the item relating to sec-~~
22 ~~tion 9534.~~

1 **PART II—ACQUISITIONS GENERALLY**

2 ~~SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EX-~~
3 ~~PANSION OF AUTHORITY TO PROHIBIT~~
4 ~~SETOFFS AGAINST ASSIGNEES; REORGANIZA-~~
5 ~~TION OF SECTION; REVISION OF OBSOLETE~~
6 ~~PROVISIONS.~~

7 Section 3737 of the Revised Statutes (41 U.S.C. 15)
8 is amended to read as follows:

9 “~~SEC. 3737. (a) No contract or order, or any interest~~
10 ~~therein, shall be transferred by the party to whom such~~
11 ~~contract or order is given to any other party, and any such~~
12 ~~transfer shall cause the annulment of the contract or order~~
13 ~~transferred, so far as the United States is concerned. All~~
14 ~~rights of action, however, for any breach of such contract~~
15 ~~by the contracting parties, are reserved to the United~~
16 ~~States.~~

17 “~~(b) The provisions of subsection (a) shall not apply~~
18 ~~in any case in which the moneys due or to become due~~
19 ~~from the United States or from any agency or department~~
20 ~~thereof, under a contract providing for payments aggreg-~~
21 ~~ating \$1,000 or more, are assigned to a bank, trust com-~~
22 ~~pany, or other financing institution, including any Federal~~
23 ~~lending agency, provided:~~

24 “~~(1) That, in the case of any contract entered~~
25 ~~into after October 9, 1940, no claim shall be as-~~

1 signed if it arises under a contract which forbids
2 such assignment;

3 ~~“(2) That, unless otherwise expressly permitted~~
4 ~~by such contract, any such assignment shall cover all~~
5 ~~amounts payable under such contract and not al-~~
6 ~~ready paid, shall not be made to more than one~~
7 ~~party, and shall not be subject to further assign-~~
8 ~~ment, except that any such assignment may be made~~
9 ~~to one party as agent or trustee for two or more~~
10 ~~parties participating in such financing;~~

11 ~~“(3) That, in the event of any such assignment,~~
12 ~~the assignee thereof shall file written notice of the~~
13 ~~assignment together with a true copy of the instru-~~
14 ~~ment of the assignment with—~~

15 ~~“(A) the contracting officer or the head of~~
16 ~~his department or agency;~~

17 ~~“(B) the surety or sureties upon the bond~~
18 ~~or bonds, if any, in connection with such con-~~
19 ~~tract; and~~

20 ~~“(C) the disbursing officer, if any, des-~~
21 ~~ignated in such contract to make payment.~~

22 ~~“(c) Notwithstanding any law to the contrary govern-~~
23 ~~ing the validity of assignments, any assignment pursuant~~
24 ~~to this section shall constitute a valid assignment for all~~
25 ~~purposes.~~

1 “(d) In any case in which moneys due or to become
2 due under any contract are or have been assigned pursu-
3 ant to this section, no liability of any nature of the as-
4 signor to the United States or any department or agency
5 thereof, whether arising from or independently of such
6 contract, shall create or impose any liability on the part
7 of the assignee to make restitution, refund, or repayment
8 to the United States of any amount heretofore since July
9 1, 1950, or hereafter received under the assignment.

10 “(e) Any contract of the Department of Defense, the
11 General Services Administration, the Department of En-
12 ergy, or any other department or agency of the United
13 States designated by the President, except any such con-
14 tract under which full payment has been made, may, upon
15 a determination of need by the President, provide or be
16 amended without consideration to provide that payments
17 to be made to the assignee of any moneys due or to become
18 due under such contract shall not be subject to reduction
19 or setoff.

20 “(f) If a provision described in subsection (e) or a
21 provision to the same general effect has been at any time
22 heretofore or is hereafter included or inserted in any such
23 contract, payments to be made thereafter to an assignee
24 of any moneys due or to become due under such contract
25 shall not be subject to reduction or setoff for any liability

1 of any nature of the assignor to the United States or any
2 department or agency thereof which arises independently
3 of such contract, or hereafter for any liability of the as-
4 signor on account of—

5 “(1) renegotiation under any renegotiation stat-
6 ute or under any statutory renegotiation article in
7 the contract;

8 “(2) fines;

9 “(3) penalties (which term does not include
10 amounts which may be collected or withheld from
11 the assignor in accordance with or for failure to
12 comply with the terms of the contract); or

13 “(4) taxes, social security contributions, or the
14 withholding or non withholding of taxes or social se-
15 curity contributions, whether arising from or inde-
16 pendently of such contract.

17 “(g) Except as herein otherwise provided, nothing in
18 this section shall be deemed to affect or impair rights of
19 obligations heretofore accrued.”.

20 **SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF**
21 **CONTRACTS WITH GAO.**

22 Section 3743 of the Revised Statutes (41 U.S.C. 20)
23 is repealed.

1 **Subtitle F—Claims and Disputes**

2 **PART I—ARMED SERVICES ACQUISITIONS**

3 **SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.**

4 (a) ~~DoD CERTIFICATION REQUIREMENT IN CON-~~
5 ~~FLICT WITH GOVERNMENT-WIDE REQUIREMENT.—~~

6 (1) ~~REPEAL.—Section 2410 of title 10, United~~
7 ~~States Code, is repealed.~~

8 (2) ~~CLERICAL AMENDMENT.—The table of sec-~~
9 ~~tions at the beginning of chapter 141 of such title~~
10 ~~is amended by striking out the item relating to sec-~~
11 ~~tion 2410.~~

12 (b) ~~REPEAL OF SUPERSEDED PROVISION.—Section~~
13 ~~813(b) of the National Defense Authorization Act for Fis-~~
14 ~~cal Year 1993 (Public Law 102–484; 106 Stat. 2453), is~~
15 ~~repealed.~~

16 (c) ~~RESTRICTION ON LEGISLATIVE PAYMENT OF~~
17 ~~CLAIMS.—Section 2310e of title 10, United States Code,~~
18 ~~is amended by adding at the end the following new sub-~~
19 ~~section:~~

20 “(d) ~~RESTRICTION ON LEGISLATIVE PAYMENT OF~~
21 ~~CLAIMS.—In the case of a contract of an agency named~~
22 ~~in section 2303(a) of this title, no provision of a law en-~~
23 ~~acted after September 30, 1993, that directs the payment~~
24 ~~of a particular claim under such contract, a particular re-~~
25 ~~quest for equitable adjustment to any term of such con-~~

1 tract, or a particular request for relief under Public Law
2 85–804 (50 U.S.C. 1431 et seq.) regarding such contract
3 may be implemented unless such provision of law—

4 “(1) specifically refers to this subsection; and

5 “(2) specifically states that this subsection does
6 not apply with respect to the payment directed by
7 that provision of law.”.

8 **PART II—ACQUISITIONS GENERALLY**

9 **SEC. 2551. CONCURRENT JURISDICTION OF UNITED** 10 **STATES DISTRICT COURTS UNDER THE LIT-** 11 **TLE TUCKER ACT.**

12 Subsection (a) of section 1346 of title 28, United
13 States Code, is amended to read as follows:

14 “(a)(1) The district courts shall have original juris-
15 diction, concurrent with the United States Court of Fed-
16 eral Claims, of any civil action against the United States
17 for the recovery of any internal-revenue tax alleged to have
18 been erroneously or illegally assessed or collected, or any
19 penalty claimed to have been collected without authority
20 or any sum alleged to have been excessive or in any man-
21 ner wrongfully collected under the internal-revenue laws.

22 “(2)(A) Except as provided in subparagraph (B), the
23 district courts shall have original jurisdiction, concurrent
24 with the United States Court of Federal Claims, of any
25 other civil action or claim against the United States, not

1 exceeding \$10,000 in amount, founded either upon the
2 Constitution, or any Act of Congress, or any regulation
3 of an executive department, or upon any express or im-
4 plied contract with the United States, or for liquidated or
5 unliquidated damages in cases not sounding in tort.

6 “(B) The district courts shall not have jurisdiction
7 over any civil action or claim against the United States
8 which relates in any manner to a contract to which the
9 Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)
10 applies, including a claim that seeks to establish the exist-
11 ence or nonexistence of such a contract, seeks to establish
12 that such a contract is void, or seeks to determine and
13 construe the terms of such a contract. The district courts
14 do not have jurisdiction over any civil action or claim de-
15 scribed in the preceding sentence pursuant to section 1331
16 or 1334 of this title or any other provision of law.”

17 **SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.**

18 (a) PERIOD FOR FILING CLAIMS.—Section 6 of the
19 Contract Disputes Act of 1978 (41 U.S.C. 605) is amend-
20 ed in subsection (a) by inserting after the second sentence
21 the following: “Each claim by a contractor against the
22 government relating to a contract and each claim by the
23 government against a contractor relating to a contract
24 shall be submitted within 6 years after the occurrence of
25 the event or events giving rise to the claim.”

1 (b) INCREASED THRESHOLD FOR CERTIFICATION,
2 DECISION, AND NOTIFICATION REQUIREMENTS.—Sub-
3 section (c) of such section is amended by striking out
4 “\$50,000” each place it appears and inserting in lieu
5 thereof “\$100,000”.

6 (c) INCREASED MAXIMUM FOR APPLICABILITY OF
7 SMALL CLAIMS PROCEDURE.—Section 9(a) of the Con-
8 tract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended
9 by striking out “\$10,000” in the first sentence and insert-
10 ing in lieu thereof “\$25,000”.

11 (d) REDUCED PERIOD FOR FILING ACTION IN
12 COURT OF FEDERAL CLAIMS.—Section 10(a)(3) of such
13 Act (41 U.S.C. 609(a)(3)) is amended by striking out
14 “twelve months” and inserting in lieu thereof “90 days”.

15 (e) CLAIM DEFINED.—Section 2 of such Act (41
16 U.S.C. 601) is amended—

17 (1) by striking out “and” at the end of para-
18 graph (6);

19 (2) by striking out the period at the end of
20 paragraph (7) and inserting in lieu thereof “; and”;
21 and

22 (3) by adding at the end the following new
23 paragraph:

24 “(8) the term ‘claim’ includes a request for eq-
25 uitable adjustment to contract terms and a request

1 for relief under Public Law 85–804 (50 U.S.C. 1431
2 et seq.).”.

3 **TITLE III—SERVICE SPECIFIC**
4 **AND MAJOR SYSTEMS STATUTES**
5 **Subtitle A—Major Systems Statutes**

6 **SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTI-**
7 **MATES AND MANPOWER ESTIMATES BEFORE**
8 **DEVELOPMENT OR PRODUCTION.**

9 (a) **CONTENT AND SUBMISSION OF ESTIMATES.—**

10 Section 2434 of title 10, United States Code, is amended
11 by striking out subsection (b) and inserting in lieu thereof
12 the following:

13 “(b) **REGULATIONS.—**The Secretary of Defense shall
14 promulgate regulations governing the content and submis-
15 sion of the estimates required by subsection (a). The regu-
16 lations shall require—

17 “(1) that the independent estimate of the cost
18 of a program—

19 “(A) be prepared by an office or other en-
20 tity that is not under the supervision, direction,
21 or control of the military department, Defense
22 Agency, or other component of the Department
23 of Defense that is directly responsible for carry-
24 ing out the development or acquisition of the
25 program; and

1 “(B) include all costs of development, pro-
 2 curement, and operations and support, without
 3 regard to funding source or management con-
 4 trol; and

5 “(2) that the manpower estimate include the
 6 total personnel required to operate, maintain, and
 7 support the program upon full operational deploy-
 8 ment.”.

9 (b) TERMINOLOGY CORRECTION.—Subsection (a) of
 10 such section is amended by striking out “full-scale engi-
 11 neering development” and inserting in lieu thereof “engi-
 12 neering and manufacturing development”.

13 **SEC. 3002. ENHANCED PROGRAM STABILITY.**

14 (a) BASELINE DESCRIPTIONS AND DEVIATION RE-
 15 PORTING.—Section 2435 of title 10, United States Code,
 16 is amended—

17 (1) in subsection (a)—

18 (A) by striking out paragraph (2); and

19 (B) in paragraph (1)—

20 (i) by striking out “(1)”; and

21 (ii) by redesignating subparagraphs
 22 (A) and (B) as paragraphs (1) and (2), re-
 23 spectively; and

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

1 “(b) REGULATIONS.—The Secretary of Defense shall
2 promulgate regulations governing—

3 “(1) the content of baseline descriptions;

4 “(2) the submission of reports on deviations of
5 a program from the baseline description by the pro-
6 gram manager to the Secretary of the military de-
7 partment concerned and the Under Secretary of De-
8 fense for Acquisition;

9 “(3) procedures for review of deviation reports
10 within the Department of Defense; and

11 “(4) procedures for submission and approval of
12 revised baseline descriptions.”.

13 (b) TERMINOLOGY CORRECTION.—Subsection (a)(1)
14 of such section, as redesignated by subsection
15 (a)(1)(B)(ii), is amended by striking out “full-scale engi-
16 neering development” and inserting in lieu thereof “engi-
17 neering and manufacturing development”.

18 **SEC. 3003. REPEAL OF REQUIREMENT FOR DEFENSE EN-**

19 **TERPRISE PROGRAMS.**

20 (a) AUTHORITY.—

21 (1) REPEAL.—Sections 2436 and 2437 of title
22 10, United States Code, are repealed.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of chapter 144 of such title

1 is amended by striking out the items relating to sec-
2 tions 2436 and 2437.

3 (b) CONFORMING AMENDMENT.—Section 809 of the
4 National Defense Authorization Act for Fiscal Year 1991
5 (Public Law 101–510; 10 U.S.C. 2430 note) is amend-
6 ed—

7 (1) by striking out subsection (d); and

8 (2) by redesignating subsections (e), (f), (g),
9 and (h) as subsections (d), (e), (f), and (g), respec-
10 tively.

11 **SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE**
12 **PROTOTYPING IN MAJOR PROGRAMS.**

13 (a) REPEAL.—Section 2438 of title 10, United States
14 Code, is repealed.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 144 of such title is amended
17 by striking out the item relating to section 2438.

18 **SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE**
19 **ALTERNATIVE SOURCES IN MAJOR PRO-**
20 **GRAMS.**

21 (a) REPEAL.—Section 2439 of title 10, United States
22 Code, is repealed.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 144 of such title is amended
25 by striking out the item relating to section 2439.

1 **Subtitle B—Testing Statutes**

2 **SEC. 3011. REPEAL OF TESTING REQUIREMENT FOR**
3 **WHEELED OR TRACKED VEHICLES.**

4 (a) ~~REPEAL.~~—Section 2362 of title 10, United States
5 Code, is repealed.

6 (b) ~~TECHNICAL AMENDMENT.~~—The table of sections
7 at the beginning of chapter 139 of such title is amended
8 by striking out the item relating to section 2362.

9 **SEC. 3012. MAJOR SYSTEMS AND MUNITIONS PROGRAMS:**
10 **SURVIVABILITY AND LETHALITY TESTING.**

11 (a) ~~SUBSTITUTION OF VULNERABILITY TESTING FOR~~
12 ~~SURVIVABILITY TESTING.~~—Section 2366 of title 10,
13 United States Code, is amended—

14 (1) by striking out “survivability” each place it
15 appears in subsections (a)(1)(A), (a)(2)(A), (c)(1),
16 (d), (e)(3), and (e)(6)(A) and inserting in lieu there-
17 of “vulnerability”; and

18 (2) in subsection (b)(1), by striking out “Sur-
19 vivability” and inserting in lieu thereof “Vulner-
20 ability”.

21 (b) ~~LESS THAN FULL-UP TESTING AUTHORIZED.~~—
22 Section 2366(e)(3) of such title is amended by inserting
23 after “configured for combat,” the following: “or, if the
24 covered system is a high value system, by firing such mu-
25 nitions at components, subsystems, and subassemblies (or

1 realistic replicas or surrogates) together with performing
2 design analyses, modeling and simulation, and analysis of
3 combat data.”.

4 (c) WAIVER AUTHORITY AFTER FULL-SCALE DE-
5 VELOPMENT BEGINS.—Section 2366(c)(1) of such title is
6 amended in the first sentence by striking out “, before
7 the system enters full-scale development,”.

8 (d) REFERENCE TO CONGRESSIONAL COMMIT-
9 TEES.—Section 2366(d) of such title is amended in the
10 first sentence by striking out “defense committees of Con-
11 gress (as defined in section 2362(e)(3) of this title)” and
12 inserting in lieu thereof “Committees on Armed Services
13 and on Appropriations of the Senate and House of Rep-
14 resentatives”.

15 **SEC. 3013. OPERATIONAL TEST AND EVALUATION OF DE-**
16 **FENSE ACQUISITION PROGRAMS.**

17 Section 2399(b) of title 10, United States Code, is
18 amended—

19 (1) by redesignating paragraph (5) as para-
20 graph (6); and

21 (2) by inserting after paragraph (4) the follow-
22 ing new paragraph (5):

23 “(5)(A) The Secretary of Defense may, for a particu-
24 lar major defense acquisition program, prescribe and apply
25 different operational test and evaluation procedures than

1 those provided under subsection (a) and paragraphs (1)
2 through (3) of this subsection if the Secretary first trans-
3 mits to Congress—

4 “(i) a certification that such testing would be
5 unreasonably expensive and impracticable, cause un-
6 warranted delay, or be unnecessary because of the
7 acquisition strategy for that system; and

8 “(ii) a description of the actions taken to en-
9 sure that the system will be operationally effective
10 and suitable when the system is introduced into the
11 field.

12 “(B) Alternative operational test and evaluation pro-
13 cedures prescribed pursuant to subparagraph (A) may not
14 be used to proceed with a major defense acquisition pro-
15 gram beyond low-rate initial production.”.

16 **SEC. 3014. LOW-RATE INITIAL PRODUCTION OF NEW SYS-**
17 **TEMS.**

18 (a) **EXCEPTION FOR STRATEGIC DEFENSE MISSILE**
19 **SYSTEMS.**—Subsection (c) of section 2400 of title 10,
20 United States Code, is amended to read as follows—

21 (1) in paragraph (1), by striking out “and mili-
22 tary satellite programs” and inserting in lieu thereof
23 “; military satellite programs, and strategic defense
24 missile programs”;

1 (2) in paragraph (2), by striking out “and mili-
 2 tary satellite program” and inserting in lieu thereof
 3 “; military satellite program, and strategic defense
 4 missile program”; and

5 (3) by striking out the caption of such sub-
 6 section and inserting in lieu thereof “LOW-RATE
 7 INITIAL PRODUCTION OF NAVAL VESSEL, SAT-
 8 ELLITE, AND STRATEGIC DEFENSE MISSILE PRO-
 9 GRAMS.—”.

10 (b) SUBMISSION OF TEST AND EVALUATION MASTER
 11 PLAN.—Paragraph (2) of such section is amended by
 12 striking out subparagraph (B) and inserting in lieu there-
 13 of the following:

14 “(B) any test and evaluation master plan pre-
 15 pared for that program;”.

16 **Subtitle C—Service Specific Laws**

17 **SEC. 3021. INDUSTRIAL MOBILIZATION.**

18 (a) CONSOLIDATION AND REVISION OF AUTHOR-
 19 ITY.—

20 (1) AUTHORITY.—Subtitle V of chapter 148 of
 21 title 10, United States Code, is amended by adding
 22 at the end the following new section:

1 **“§ 2538. Industrial mobilization: orders; priorities;**
2 **possession of manufacturing plants; vio-**
3 **lations**

4 “(a) ORDERING AUTHORITY.—In time of war or
5 when war is imminent, the President, through the Sec-
6 retary of Defense or the Secretary of a military depart-
7 ment, may order from any person or organized manufac-
8 turing industry necessary products or materials of the
9 type usually produced or capable of being produced by
10 that person or industry.

11 “(b) COMPLIANCE WITH ORDER REQUIRED.—A per-
12 son or industry with whom an order is placed under sub-
13 section (a), or the responsible head thereof, shall comply
14 with that order and give it precedence over all orders not
15 placed under that subsection.

16 “(c) SEIZURE OF FACILITIES UPON NONCOMPLI-
17 ANCE.—In time of war or when war is imminent, the
18 President, through the Secretary of Defense or the Sec-
19 retary of a military department, may take immediate pos-
20 session of any plant that is equipped to manufacture, or
21 that in the opinion of the Secretary of Defense or the Sec-
22 retary of the military department concerned, is capable of
23 being readily transformed into a plant for manufacturing,
24 arms or ammunition, parts thereof, or necessary supplies
25 for the armed forces if the person or industry owning or

1 operating the plant, or the responsible head thereof, re-
2 fuses—

3 ~~“(1) to give precedence to the order as pre-~~
4 ~~scribed in subsection (b);~~

5 ~~“(2) to manufacture the kind, quantity, or qual-~~
6 ~~ity of arms or ammunition, parts thereof, or nec-~~
7 ~~essary supplies, as ordered by the Secretary; or~~

8 ~~“(3) to furnish them at a reasonable price as~~
9 ~~determined by the Secretary.~~

10 ~~“(d) USE OF SEIZED FACILITY.—The President,~~
11 ~~through the Secretary of Defense or the Secretary of a~~
12 ~~military department, may manufacture products that are~~
13 ~~needed in time of war or when war is imminent, in any~~
14 ~~plant that is seized under subsection (c).~~

15 ~~“(e) COMPENSATION REQUIRED.—Each person or in-~~
16 ~~dustry from whom products or materials are ordered~~
17 ~~under subsection (a) is entitled to fair and just compensa-~~
18 ~~tion. Each person or industry whose plant is seized under~~
19 ~~subsection (c) is entitled to a fair and just rental.~~

20 ~~“(f) CRIMINAL PENALTY.—Whoever fails to comply~~
21 ~~with this section shall be imprisoned for not more than~~
22 ~~three years and fined not more than \$50,000.”.~~

23 ~~(2) TECHNICAL AMENDMENT.—The table of~~
24 ~~sections at the beginning of subchapter V of such~~

1 chapter is amended by adding at the end the follow-
 2 ing new item:

“2538. Industrial mobilization: orders; priorities; possession of manufacturing
 plants; violations.”.

3 ~~(b) REPEAL OF SUPERSEDED AUTHORITY.—~~

4 ~~(1) ARMY AUTHORITY.—~~

5 ~~(A) REPEAL.—Section 4501 of title 10,~~
 6 ~~United States Code, is repealed.~~

7 ~~(B) CLERICAL AMENDMENT.—The table of~~
 8 ~~sections at the beginning of chapter 431 of such~~
 9 ~~title is amended by striking out the item relat-~~
 10 ~~ing to section 4501.~~

11 ~~(2) AIR FORCE AUTHORITY.—~~

12 ~~(A) REPEAL.—Section 9501 of title 10,~~
 13 ~~United States Code, is repealed.~~

14 ~~(B) CLERICAL AMENDMENT.—The table of~~
 15 ~~sections at the beginning of subchapter I of~~
 16 ~~chapter 931 of such title is amended by striking~~
 17 ~~out the item relating to section 9501.~~

18 **SEC. 3022. INDUSTRIAL MOBILIZATION: PLANTS; LISTS;**
 19 **BOARD ON MOBILIZATION OF INDUSTRIES**
 20 **ESSENTIAL FOR MILITARY PREPAREDNESS.**

21 ~~(a) CONSOLIDATION AND REVISION OF AUTHOR-~~
 22 ~~ITY.—~~

23 ~~(1) AUTHORITY.—Subchapter V of chapter 148~~
 24 ~~of title 10, United States Code, as amended by sec-~~

1 tion 3021(a)(1), is further amended by adding at
2 the end the following:

3 “**§ 2539. Industrial mobilization: plants; lists; Board**
4 **on Mobilization of Industries Essential**
5 **for Military Preparedness**

6 “(a) **LISTS OF ARMS AND AMMUNITION PLANTS.**—

7 The Secretary of Defense and the secretaries of the mili-
8 tary departments may each maintain a list of privately
9 owned plants in the United States, and the Territories,
10 Commonwealths, and possessions of the United States,
11 that are equipped to manufacture for the armed forces
12 arms or ammunition, or parts thereof, and may, when the
13 Secretary of Defense or the Secretary concerned deter-
14 mines it necessary, obtain complete information of the
15 kinds of those products manufactured or capable of being
16 manufactured by each of those plants, and of the equip-
17 ment and capacity of each of those plants.

18 “(b) **LISTS OF PLANTS CONVERTIBLE TO ARMS AND**
19 **AMMUNITION FACTORIES.**—The Secretary of Defense and
20 the secretaries of the military departments may each
21 maintain a list of privately owned plants in the United
22 States, and the Territories, Commonwealths, and posses-
23 sions of the United States, that are capable of being read-
24 ily transformed into factories for the manufacture of am-
25 munition for the armed forces and that have a capacity

1 sufficient to warrant conversion into ammunition plants
2 in time of war or when war is imminent, and may, when
3 the Secretary of Defense or the Secretary concerned deter-
4 mines it necessary, obtain complete information as to the
5 equipment of each of those plants.

6 “(c) ~~CONVERSION PLANS.~~—The Secretary of Defense
7 or the Secretary concerned may prepare comprehensive
8 plans for converting each plant listed pursuant to sub-
9 section (b) into a factory for the manufacture of ammuni-
10 tion or parts thereof.

11 “(d) ~~BOARD ON MOBILIZATION OF INDUSTRIES ES-~~
12 ~~SENTIAL FOR MILITARY PREPAREDNESS.~~—The President
13 may appoint a nonpartisan Board on Mobilization of In-
14 dustries Essential for Military Preparedness and may pro-
15 vide necessary clerical assistance to organize and coordi-
16 nate operations under this section and section 2538 of this
17 title.”.

18 (2) ~~CLERICAL AMENDMENT.~~—The table of sec-
19 tions at the beginning of subchapter V of such chap-
20 ter, as amended by section 3021(a)(2), is further
21 amended by adding at the end the following new
22 item:

“2539. Industrial mobilization: plants; lists; Board on Mobilization of Industries
Essential for Military Preparedness.”.

23 (b) ~~REPEAL OF SUPERSEDED AUTHORITY.~~—

24 (1) ~~ARMY AUTHORITY.~~—

1 (A) REPEAL.—Section 4502 of title 10,
2 United States Code, is repealed.

3 (B) CLERICAL AMENDMENT.—The table of
4 sections at the beginning of chapter 431 of such
5 title is amended by striking out the item relat-
6 ing to section 4502.

7 (2) AIR FORCE AUTHORITY.—

8 (A) REPEAL.—Section 9502 of title 10,
9 United States Code, is repealed.

10 (B) CLERICAL AMENDMENT.—The table of
11 sections at the beginning of subchapter I of
12 chapter 931 of such title is amended by striking
13 out the item relating to section 9502.

14 **SEC. 3023. PROCUREMENT FOR EXPERIMENTAL PURPOSES.**

15 (a) CONSOLIDATION AND REVISION OF AUTHOR-
16 ITY.—

17 (1) AUTHORITY.—Chapter 139 of title 10,
18 United States Code, is amended by adding at the
19 end the following new section:

20 **“§ 2373. Procurement for experimental purposes**

21 “The Secretary of Defense and the secretaries of the
22 military departments may each buy ordnance, signal, and
23 chemical warfare supplies, including parts and accessories,
24 and designs thereof, that the Secretary of Defense or the
25 Secretary concerned considers necessary for experimental

1 or test purposes in the development of the best supplies
2 that are needed for the national defense. Purchases under
3 this section may be made inside or outside the United
4 States by contract or otherwise. Chapter 137 of this title
5 applies when such purchases are made in quantity.”.

6 (2) CLERICAL AMENDMENT.—The table of sec-
7 tions at the beginning of such chapter is amended
8 by adding at the end the following new item:

“2373. Procurement for experimental purposes.”.

9 (b) REPEAL OF SUPERSEDED AUTHORITY.—

10 (1) ARMY AUTHORITY.—

11 (A) REPEAL.—Section 4504 of title 10,
12 United States Code, is repealed.

13 (B) CLERICAL AMENDMENT.—The table of
14 sections at the beginning of chapter 431 of such
15 title is amended by striking out the item relat-
16 ing to section 4504.

17 (2) AIR FORCE AUTHORITY.—

18 (A) REPEAL.—Section 9504 of title 10,
19 United States Code, is repealed.

20 (B) CLERICAL AMENDMENT.—The table of
21 sections at the beginning of subchapter I of
22 chapter 931 of such title is amended by striking
23 out the item relating to section 9504.

1 **SEC. 3024. REPEAL OF AUTHORITY FOR PROCUREMENT OF**
2 **PRODUCTION EQUIPMENT.**

3 (a) ~~ARMY AUTHORITY.—~~

4 (1) ~~REPEAL.—~~Section 4505 of title 10, United
5 States Code, is repealed.

6 (2) ~~CLERICAL AMENDMENT.—~~The table of sec-
7 tions at the beginning of chapter 431 of such title
8 is amended by striking out the item relating to sec-
9 tion 4505.

10 (b) ~~AIR FORCE AUTHORITY.—~~

11 (1) ~~REPEAL.—~~Section 9505 of title 10, United
12 States Code, is repealed.

13 (2) ~~CLERICAL AMENDMENT.—~~The table of sec-
14 tions at the beginning of subchapter I of chapter
15 931 of such title is amended by striking out the item
16 relating to section 9505.

17 **SEC. 3025. AVAILABILITY OF DEPARTMENT OF DEFENSE**
18 **SAMPLES, DRAWINGS, INFORMATION, EQUIP-**
19 **MENT, MATERIALS, AND CERTAIN SERVICES.**

20 (a) ~~CONSOLIDATION AND REVISION OF AUTHOR-~~
21 ~~ITY.—~~

22 (1) ~~AUTHORITY.—~~Subchapter V of chapter 148
23 of title 10, United States Code, as amended by sec-
24 tion 3022(a)(1), is further amended by adding at
25 the end the following:

1 **“§ 2540. Availability of samples, drawings, informa-**
2 **tion, equipment, materials, and certain**
3 **services**

4 ~~“(a) AUTHORITY.—~~The Secretary of Defense and the
5 secretaries of the military departments, under regulations
6 prescribed by the Secretary of Defense and when deter-
7 mined by the Secretary of Defense or the Secretary con-
8 cerned to be in the interest of national defense, may
9 each—

10 ~~“(1) sell, lend, or give samples, drawings, and~~
11 ~~manufacturing or other information (subject to the~~
12 ~~rights of third parties) to any person or entity;~~

13 ~~“(2) sell or lend government equipment or ma-~~
14 ~~terials to any person or entity—~~

15 ~~“(A) for use in independent research and~~
16 ~~development programs, subject to the condition~~
17 ~~that the equipment or material be used exclu-~~
18 ~~sively for such research and development; or~~

19 ~~“(B) for use in demonstrations to a friend-~~
20 ~~ly foreign government; and~~

21 ~~“(3) make available to any person or entity, at~~
22 ~~an appropriate fee, the services of any government~~
23 ~~laboratory, center, range, or other testing facility for~~
24 ~~the testing of materials, equipment, models, com-~~
25 ~~puter software, and other items.~~

1 “(b) CONFIDENTIALITY OF TEST RESULTS.—The re-
2 sults of tests performed with services made available pur-
3 suant to subsection (a)(3) are confidential and may not
4 be disclosed outside the Federal Government without the
5 consent of the persons for whom the tests are performed.

6 “(c) FEES.—Fees for services made available for
7 testing under subsection (a)(3) shall be established in the
8 regulations prescribed pursuant to subsection (a). Such
9 fees may not be less than the direct costs involved, includ-
10 ing the direct costs of utilities, contractor support, and
11 salaries of personnel that are incurred by the United
12 States to provide for the testing.

13 “(d) USE OF COLLECTED FEES.—Fees received for
14 services made available pursuant to subsection (a)(3) may
15 be credited to the appropriations or other funds of the ac-
16 tivity providing such services.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of subchapter V of such chap-
19 ter, as amended by section 3022(a)(2), is further
20 amended by adding at the end the following new
21 item:

“2540. Availability of samples, drawings, information, equipment, materials, and
certain services.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) EXEMPTION FROM ADVERTISING REQUIRE-
24 MENT.—Section 2314 of title 10, United States

1 Code, is amended by inserting “or sale” after “pro-
2 curement”.

3 ~~(2) REPEAL OF SUPERSEDED ARMY AUTHOR-~~
4 ~~ITY.—Chapter 431 of title 10, United States Code,~~
5 ~~is amended—~~

6 ~~(A) by striking out sections 4506, 4507,~~
7 ~~and 4508; and~~

8 ~~(B) in the table of sections at the begin-~~
9 ~~ning of such chapter, by striking out the items~~
10 ~~relating to such sections.~~

11 ~~(3) REPEAL OF SUPERSEDED AIR FORCE AU-~~
12 ~~THORITY.—Subchapter I of chapter 931 of title 10,~~
13 ~~United States Code, is amended—~~

14 ~~(A) by striking out sections 9506 and~~
15 ~~9507; and~~

16 ~~(B) in the table of sections at the begin-~~
17 ~~ning of such subchapter, by striking out the~~
18 ~~items relating to such sections.~~

19 **SEC. 3026. REPEAL OF DUPLICATIVE GENERAL PROCURE-**
20 **MENT AUTHORITY.**

21 ~~(a) ARMY AUTHORITY.—~~

22 ~~(1) REPEAL.—Section 4531 of title 10, United~~
23 ~~States Code, is repealed.~~

24 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
25 ~~tions at the beginning of chapter 433 of such title~~

1 is amended by striking out the item relating to sec-
2 tion 4531.

3 ~~(b) AIR FORCE AUTHORITY.—~~

4 ~~(1) REPEAL.—Section 9531 of title 10, United~~
5 ~~States Code, is repealed.~~

6 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
7 ~~tions at the beginning of chapter 933 of such title~~
8 ~~is amended by striking out the item relating to sec-~~
9 ~~tion 9531.~~

10 **SEC. 3027. REPEAL OF AUTHORITY TO DELEGATE THE PRO-**
11 **CUREMENT OF ARMY RATIONS.**

12 ~~(a) REPEAL.—Section 4533 of title 10, United States~~
13 ~~Code, is repealed.~~

14 ~~(b) CLERICAL AMENDMENT.—The table of sections~~
15 ~~at the beginning of chapter 433 of such title is amended~~
16 ~~by striking out the item relating to section 4533.~~

17 **SEC. 3028. REPEAL OF AUTHORITY TO PURCHASE EXCEP-**
18 **TIONAL SUBSISTENCE SUPPLIES WITHOUT**
19 **ADVERTISING.**

20 ~~(a) ARMY AUTHORITY.—~~

21 ~~(1) REPEAL.—Section 4535 of title 10, United~~
22 ~~States Code, is repealed.~~

23 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
24 ~~tions at the beginning of chapter 433 of such title~~

1 is amended by striking out the item relating to sec-
2 tion 4535.

3 ~~(b) AIR FORCE AUTHORITY.—~~

4 (1) REPEAL.—Section 9535 of title 10, United
5 States Code, is repealed.

6 ~~(2) CLERICAL AMENDMENT.—~~The table of sec-
7 tions at the beginning of chapter 933 of such title
8 is amended by striking out the item relating to sec-
9 tion 9535.

10 **SEC. 3029. REPEAL OF AUTHORITY TO OBTAIN ASSISTANCE**
11 **OF UNITED STATES MAPPING AGENCIES.**

12 ~~(a) ARMY AUTHORITY.—~~

13 (1) REPEAL.—Section 4537 of title 10, United
14 States Code, is repealed.

15 ~~(2) CLERICAL AMENDMENT.—~~The table of sec-
16 tions at the beginning of chapter 433 of such title
17 is amended by striking out the item relating to sec-
18 tion 4537.

19 ~~(b) AIR FORCE AUTHORITY.—~~

20 (1) REPEAL.—Section 9537 of title 10, United
21 States Code, is repealed.

22 ~~(2) CLERICAL AMENDMENT.—~~The table of sec-
23 tions at the beginning of chapter 933 of such title
24 is amended by striking out the item relating to sec-
25 tion 9537.

1 **SEC. 3030. REPEAL OF AUTHORITY TO RECLAIM UNSERV-**
2 **ICEABLE AMMUNITION.**

3 (a) **ARMY AUTHORITY.**—

4 (1) **REPEAL.**—Section 4538 of title 10, United
5 States Code, is repealed.

6 (2) **CLERICAL AMENDMENT.**—The table of sec-
7 tions at the beginning of chapter 433 of such title
8 is amended by striking out the item relating to sec-
9 tion 4538.

10 (b) **AIR FORCE AUTHORITY.**—

11 (1) **REPEAL.**—Section 9538 of title 10, United
12 States Code, is repealed.

13 (2) **CLERICAL AMENDMENT.**—The table of sec-
14 tions at the beginning of chapter 933 of such title
15 is amended by striking out the item relating to sec-
16 tion 9538.

17 **SEC. 3031. GRATUITOUS SERVICES OF OFFICERS OF CER-**
18 **TAIN RESERVE COMPONENTS.**

19 (a) **CONSOLIDATION AND REVISION OF AUTHOR-**
20 **ITY.**—

21 (1) **AUTHORITY.**—Chapter 11 of title 10,
22 United States Code, is amended by inserting after
23 section 278 the following new section:

1 **“§ 279. Gratuitous services of officers of certain re-**
 2 **serve components**

3 “The Secretary of Defense and the secretaries of the
 4 military departments may each accept the gratuitous serv-
 5 ices of officers of the Army Reserve, Naval Reserve, Air
 6 Force Reserve, and Marine Corps Reserve in the enrolling,
 7 organizing, and training of members of such reserve com-
 8 ponents or the Reserve Officers’ Training Corps, or in
 9 consulting on matters relating to the armed forces.”.

10 ~~(2) CLERICAL AMENDMENT.~~—The table of sec-
 11 tions at the beginning of chapter 11 of such title is
 12 amended by inserting after the item relating to sec-
 13 tion 278 the following new item:

“Sec. 279. Gratuitous services of officers of certain reserve components.”.

14 ~~(b) REPEAL OF SUPERSEDED PROVISIONS.~~—

15 ~~(1) ARMY AUTHORITY.~~—

16 ~~(A) REPEAL.~~—Section 4541 of title 10,
 17 United States Code, is repealed.

18 ~~(B) CLERICAL AMENDMENT.~~—The table of
 19 sections at the beginning of chapter 433 of such
 20 title is amended by striking out the item relat-
 21 ing to section 4541.

22 ~~(2) AIR FORCE AUTHORITY.~~—

23 ~~(A) REPEAL.~~—Section 9541 of title 10,
 24 United States Code, is repealed.

1 (B) CLERICAL AMENDMENT.—The table of
2 sections at the beginning of chapter 933 of such
3 title is amended by striking out the item relat-
4 ing to section 9541.

5 **SEC. 3032. CIVIL RESERVE AIR FLEET.**

6 (a) DEFINITION OF CONTRACTOR.—Section 9511(8)
7 of title 10, United States Code, is amended—

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

10 (2) by inserting before the period at the end the
11 following: “; or (C) who owns or controls, or will
12 own or control, new or existing aircraft and who, by
13 contract, commits some or all of such aircraft to the
14 Civil Reserve Air Fleet”.

15 (b) CONSOLIDATION OF PROVISIONS RELATING TO
16 CONTRACTUAL COMMITMENT OF AIRCRAFT.—Subchapter
17 II of chapter 931 of such title is amended—

18 (1) by redesignating subsections (b) and (c) of
19 section 9512 as subsections (c) and (d), respectively;

20 (2) by redesignating subsection (a) of section
21 9513 as subsection (b) and transferring such sub-
22 section (as so redesignated) to section 9512, and in-
23 serting such subsection after subsection (a);

24 (3) by redesignating subsection (b) of section
25 9513 as subsection (c) and transferring such sub-

1 section (as so redesignated) to the end of section
2 9512;

3 (4) in subsection (c) of section 9512, as rededesignated by paragraph (1), by striking out “the terms
4 required by section 9513 of this title and”;

5 (5) in subsection (e) of section 9512, as redesignated and transferred to such section by paragraph (3), by striking out “under section 9512 of
6 this title” and inserting in lieu thereof “entered into
7 under this section”; and

8 (6) by striking out the heading of section 9513.

9 (c) USE OF MILITARY INSTALLATIONS BY CONTRACTORS.—

10 (1) AUTHORITY.—Subchapter II of such chapter, as amended by subsection (b), is further amended by adding at the end the following new section
11 9513:

12 **“§ 9513. Use of military installations by Civil Reserve**

13 **Air Fleet contractors**

14 “(a) CONTRACT AUTHORITY.—(1) The Secretary of
15 the Air Force—

16 “(A) may, by contract entered into with any
17 contractor, authorize such contractor to use one or
18 more Air Force installations designated by the Secretary; and
19

1 ~~“(B) with the consent of the Secretary of an-~~
2 ~~other military department, may, by contract entered~~
3 ~~into with any contractor, authorize the contractor to~~
4 ~~use one or more installations, designated by the Sec-~~
5 ~~retary of the Air Force, that is under the jurisdic-~~
6 ~~tion of the Secretary of such other military depart-~~
7 ~~ment.~~

8 ~~“(2) The Secretary of the Air Force may include in~~
9 ~~the contract such terms and conditions as the Secretary~~
10 ~~determines appropriate to promote the national defense or~~
11 ~~to protect the interests of the United States.~~

12 ~~“(b) PURPOSES OF USE.—A contract entered into~~
13 ~~under subsection (a) may authorize use of a designated~~
14 ~~installation as a weather alternate, a technical stop not~~
15 ~~involving the enplaning or deplaning of passengers or~~
16 ~~cargo, or, in the case of an installation within the United~~
17 ~~States, for other commercial purposes. Notwithstanding~~
18 ~~any other provision of the law, the Secretary may establish~~
19 ~~different levels and types of uses for different installations~~
20 ~~and may provide in contracts under subsection (a) for dif-~~
21 ~~ferent levels and types of uses by different contractors.~~

22 ~~“(c) DISPOSITION OF PAYMENTS FOR USE.—Not-~~
23 ~~withstanding the provisions of section 1107(b) of the Fed-~~
24 ~~eral Aviation Act of 1958 (49 U.S.C. 1507(b)), and any~~
25 ~~other provision of law, amounts collected in a fiscal year~~

1 from a contractor for services or supplies or as landing
2 fees or other charges authorized to be collected for use
3 of an installation under a contract entered into under sub-
4 section (a) shall be credited to an appropriation for such
5 fiscal year for the military department that has jurisdic-
6 tion over such installation.

7 “(d) ~~HOLD HARMLESS REQUIREMENT.~~—A contract
8 entered into under subsection (a) shall provide that the
9 contractor agrees to indemnify and hold harmless the Air
10 Force (and any other armed force having jurisdiction over
11 any installation covered by the contract) from all actions,
12 suits, or claims of any sort resulting from, relating to, or
13 arising out of any activities conducted, or services or sup-
14 plies furnished, in connection with the contract.

15 “(e) ~~RESERVATION OF RIGHT TO EXCLUDE CON-~~
16 ~~TRACTOR.~~—A contract entered into under subsection (a)
17 shall provide that the Secretary concerned may, without
18 providing prior notice, deny access to an installation des-
19 ignated under the contract when the Secretary determines
20 that it is necessary to do so in order to meet military ex-
21 igencies.”.

22 (2) ~~CLERICAL AMENDMENT.~~—The table of sec-
23 tions at the beginning of subchapter II of such chap-
24 ter is amended by striking out the item relating to

1 section 9513 and inserting in lieu thereof the follow-
 2 ing:

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

3 **SEC. 3033. REPEAL OF NAVY AUTHORITY REGARDING RE-**
 4 **SEARCH AND DEVELOPMENT, PROCURE-**
 5 **MENT, AND CONSTRUCTION OF GUIDED MIS-**
 6 **SILES.**

7 (a) **REPEAL OF OBSOLETE AUTHORITY.**—Section
 8 7201 of title 10, United States Code, is repealed.

9 (b) **CLERICAL AMENDMENT.**—The table of sections
 10 at the beginning of chapter 631 of such title is amended
 11 by striking out the item relating to section 7201.

12 **SEC. 3034. EXCHANGE OF SCIENTIFIC PERSONNEL.**

13 (a) **EXCHANGE AUTHORITY.**—Subchapter II of chap-
 14 ter 138 of title 10, United States Code, is amended by
 15 adding at the end the following new section:

16 **“§ 2350j. Exchange of scientific personnel**

17 **“(a) INTERNATIONAL EXCHANGE AGREEMENTS AU-**
 18 **THORIZED.**—The Secretary of Defense is authorized to
 19 enter into agreements with the governments of allies of
 20 the United States and other friendly foreign countries for
 21 the exchange of military and civilian scientific personnel
 22 of the Department of Defense and military and civilian
 23 scientific personnel of the defense ministries of such for-
 24 eign governments.

1 “(b) ASSIGNMENT OF PERSONNEL.—Pursuant to an
2 agreement entered into under subsection (a), personnel of
3 the defense ministry of a foreign government may be as-
4 signed to positions in the Department of Defense, and per-
5 sonnel of the Department of Defense may be assigned to
6 positions in the defense ministry of that foreign govern-
7 ment. An agreement for the exchange of personnel en-
8 gaged in research and development activities may provide
9 for assignment of such personnel to positions in private
10 industry that support the defense ministry of such foreign
11 government. A specific position and the individual to be
12 assigned to that position shall be acceptable to both gov-
13 ernments.

14 “(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS
15 REQUIRED.—Each government shall be required under an
16 agreement authorized by subsection (a) to provide person-
17 nel having qualifications, training, and skills that are es-
18 sentially equal to those of the personnel provided by the
19 other government.

20 “(d) PAYMENT OF PERSONNEL COSTS.—Each gov-
21 ernment shall pay the salary, per diem, cost of living, trav-
22 el, cost of language or other training, and other costs (ex-
23 cept for cost of temporary duty directed by the host gov-
24 ernment and costs incident to the use of host government
25 facilities in the performance of assigned duties) for its own

1 personnel in accordance with the laws and regulations of
2 such government that pertain to such matters.”.

3 (b) ~~CLERICAL AMENDMENT.~~—The table of sections
4 at the beginning of subchapter H of such chapter is
5 amended by adding at the end the following new item:

“2350j. Exchange of scientific personnel.”.

6 **SEC. 3035. REPEAL OF AUTHORITY FOR SECRETARY OF**
7 **THE NAVY TO PROVIDE TEMPORARY RELIEF**
8 **FOR CONTRACTORS AND CONTRACTOR EM-**
9 **PLOYEES FROM LOSSES CAUSED BY ENEMY**
10 **ACTION.**

11 (a) ~~REPEAL.~~—Section 7213 of title 10, United States
12 Code, is repealed.

13 (b) ~~CLERICAL AMENDMENT.~~—The table of sections
14 at the beginning of chapter 631 of such title is amended
15 by striking out the item relating to section 7213.

16 **SEC. 3036. REPEAL OF AUTHORITY FOR SECRETARY OF**
17 **THE NAVY TO SELL DEGAUSSING EQUIP-**
18 **MENT.**

19 (a) ~~REPEAL.~~—Section 7230 of title 10, United States
20 Code, is repealed.

21 (b) ~~CLERICAL AMENDMENT.~~—The table of sections
22 at the beginning of chapter 631 of such title is amended
23 by striking out the item relating to section 7230.

1 **SEC. 3037. REPEAL OF AUTHORITY FOR ALTERNATIVE USE**
2 **OF APPROPRIATIONS FOR CONSTRUCTION**
3 **OR CONVERSION OF VESSELS.**

4 (a) ~~REPEAL.~~—Section 7296 of title 10, United States
5 Code, is repealed.

6 (b) ~~CLERICAL AMENDMENT.~~—The table of sections
7 at the beginning of chapter 633 of such title is amended
8 by striking out the item relating to section 7296.

9 **SEC. 3038. REPEAL OF AUTHORITY FOR CONVERSION OF**
10 **COMBATANT AND AUXILIARY NAVAL VES-**
11 **SELS.**

12 (a) ~~REPEAL.~~—Section 7298 of title 10, United States
13 Code, is repealed.

14 (b) ~~CLERICAL AMENDMENT.~~—The table of sections
15 at the beginning of chapter 633 of such title is amended
16 by striking out the item relating to section 7298.

17 **SEC. 3039. CONSTRUCTION OF COMBATANT AND ESCORT**
18 **VESSELS AND ASSIGNMENT OF VESSEL**
19 **PROJECTS.**

20 (a) ~~REPEAL OF OBSOLETE AND INTERNALLY INCON-~~
21 ~~SISTENT PROVISIONS.~~—Section 7299a of title 10, United
22 States Code, is amended—

23 (1) by striking out subsection (a); and

24 (2) by redesignating subsections (b) and (c) as
25 subsections (a) and (b), respectively.

1 (b) CONFORMING AMENDMENT.—Subsection (b) of
2 such section, as redesignated by subsection (a)(2), is
3 amended in paragraph (2) by striking out “subsection (a)
4 or”.

5 **SEC. 3040. REPEAL OF REQUIREMENT FOR ESTIMATES IN**
6 **CONNECTION WITH BIDS ON CONSTRUCTION**
7 **OF NAVAL VESSELS.**

8 (a) REPEAL.—Section 7301 of title 10, United States
9 Code, is repealed.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 633 of such title is amended
12 by striking out the item relating to section 7301.

13 **SEC. 3041. REPEAL OF REQUIREMENT FOR CONSTRUCTION**
14 **OF VESSELS ON PACIFIC COAST.**

15 (a) REPEAL.—Section 7302 of title 10, United States
16 Code, is repealed.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 at the beginning of chapter 633 of such title is amended
19 by striking out the item relating to section 7302.

20 **SEC. 3042. FITNESS OF NAVAL VESSELS: EXAMINATION;**
21 **STRIKING UNFIT VESSELS; DISPOSAL.**

22 (a) CONSOLIDATION AND REVISION OF AUTHOR-
23 ITY.—

24 (1) AUTHORITY.—Section 7304 of title 10,
25 United States Code, is amended to read as follows:

1 **“§ 7304. Fitness of vessels: examination; striking from**
2 **Naval Vessel Register; disposal**

3 “(a) TRIENNIAL EXAMINATION OF VESSELS RE-
4 QUIRED.—The Secretary of the Navy shall designate
5 boards of naval officers to examine all naval vessels, in-
6 cluding unfinished vessels. Each vessel shall be examined
7 at least once every three years if practicable.

8 “(b) BOARD RECOMMENDATIONS.—A board des-
9 ignated under subsection (a) shall recommend to the Sec-
10 retary of the Navy in writing which vessels, if any, should
11 be stricken from the Naval Vessel Register. In making
12 such recommendations, the board shall consider whether
13 a vessel is unfit for service or whether an unfinished vessel
14 cannot be finished without disproportionate expense.

15 “(c) ACTION OF THE SECRETARY.—If the Secretary
16 concurs with a board’s recommendation that a vessel be
17 stricken from the Naval Vessel Register, the Secretary
18 shall strike the name of that vessel from the Naval Vessel
19 Register.

20 “(d) APPRAISAL OF STRICKEN VESSEL.—The Sec-
21 retary of the Navy shall appraise each vessel stricken from
22 the Naval Vessel Register.

23 “(e) SALE OF STRICKEN VESSEL.—(1) When the
24 Secretary determines that it is in the national interest,
25 the Secretary may sell a vessel stricken from the Naval
26 Vessel Register.

1 “(2) A vessel stricken from the Naval Vessel Register
2 and not subject to disposition under any other law, may
3 be sold at public sale to the highest acceptable bidder, re-
4 gardless of the vessel’s appraised value, after being adver-
5 tised for sale for a period of not less than 30 days.

6 “(3) If the Secretary determines that the bid prices
7 received after advertising are not reasonable and that
8 readvertising will serve no useful purpose, the vessel may
9 be sold by negotiation to the highest acceptable offeror,
10 but only if—

11 “(A) each responsible bidder has been notified
12 of the intent to negotiate a sale of the vessel and has
13 been given a reasonable opportunity to negotiate
14 with the Secretary for the purchase of that vessel;
15 and

16 “(B) the negotiated price—

17 “(i) is higher than the highest rejected
18 price of any responsible bidder; or

19 “(ii) is reasonable and is in the national
20 interest.

21 “(f) OTHER TRANSFERS.—(1) The Secretary of the
22 Navy is authorized to transfer, by gift or otherwise, any
23 vessel stricken from the Naval Vessel Register or any cap-
24 tured vessel to—

1 “(A) any State, Commonwealth, or possession
2 of the United States, or to any municipal corpora-
3 tion or political subdivision thereof;

4 “(B) the District of Columbia; or

5 “(C) any not-for-profit or nonprofit entity.

6 “(2) A transfer under paragraph (1) shall be made
7 at no cost to the United States and may not be made un-
8 less the transferee agrees to maintain the vessel in a condi-
9 tion satisfactory to the Secretary of the Navy.

10 “(g) USE FOR EXPERIMENTAL PURPOSES.—The
11 Secretary of the Navy is authorized to use for experi-
12 mental purposes any vessel stricken from the Naval Vessel
13 Register. A vessel so used shall first be stripped to the
14 maximum extent practicable. The proceeds received from
15 stripping the vessel shall be credited to appropriations
16 available for the procurement of the scrapping services
17 needed for stripping of that vessel. Excess receipts shall
18 be deposited into the general fund of the Treasury.

19 “(h) INAPPLICABILITY OF OTHER LAW.—The provi-
20 sions of title II of the Federal Property and Administra-
21 tive Services Act of 1949 (40 U.S.C. 481 et seq.) do not
22 apply to the disposition of a naval vessel under this sec-
23 tion.

24 “(i) LIMITATION.—Notwithstanding any other provi-
25 sion of law, no battleship, aircraft carrier, cruiser, de-

1 stroyer, or submarine of the Navy may be sold, trans-
2 ferred, or otherwise disposed of, unless the Chief of Naval
3 Operations certifies that it is not essential to the defense
4 of the United States.”.

5 (2) CLERICAL AMENDMENT.—The item relating
6 to such section in the table of sections at the begin-
7 ning of chapter 633 of such title is amended to read
8 as follows:

“7304. Fitness of vessels: examination; striking from Naval Vessel Register; dis-
posal.”.

9 (b) REPEAL OF SUPERSEDED PROVISIONS.—

10 (1) REPEAL.—Sections 7305, 7306, 7307, and
11 7308 of title 10, United States Code, are repealed.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of chapter 633 of such title
14 is amended by striking out the items relating to such
15 sections.

16 **SEC. 3043. REPEAL OF POLICY ON CONSTRUCTING COM-**
17 **BATANT VESSELS.**

18 (a) REPEAL.—Section 7310 of title 10, United States
19 Code, is repealed.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of chapter 633 of such title is amended
22 by striking out the item relating to section 7310.

1 **SEC. 3044. NAVAL SALVAGE FACILITIES.**

2 (a) CONSOLIDATION OF AUTHORITY.—Chapter 637
3 of title 10, United States Code, is amended—

4 (1) in section 7361—

5 (A) in subsection (a), by inserting “AU-
6 THORITY TO PROVIDE FACILITIES BY CON-
7 TRACT OR OTHERWISE.—” after “(a)”;

8 (B) in subsection (b), by inserting “CON-
9 TRACTS AFFECTING THE DEPARTMENT OF
10 TRANSPORTATION.—” after “(b)”;

11 (C) in subsection (c)—

12 (i) by inserting “LIMITATION ON
13 TERM CONTRACTS.—” after “(c)”;

14 (ii) by striking out “under this sec-
15 tion” and inserting in lieu thereof “under
16 subsection (a)”;

17 (2) by designating the text of section 7362 as
18 subsection (d) and transferring such text, as so des-
19 ignated, to the end of section 7361 of title 10,
20 United States Code;

21 (3) in subsection (d) of section 7361 of such
22 title, as so designated and transferred, by inserting
23 before “The Secretary” the following: “COMMERCIAL
24 USE OF NAVAL VESSELS AND EQUIPMENT.—”;

25 (4) by designating the text of section 7363 as
26 subsection (e) and transferring such text, as so des-

1 ignated, to the end of section 7361 of title 10,
2 United States Code;

3 (5) in subsection (e) of section 7361 of such
4 title, as so designated and transferred, by inserting
5 before “Before any salvage vessel” the following:
6 “CONDITIONS FOR TRANSFER OF EQUIPMENT.—”;

7 (6) by designating the text of section 7365 as
8 subsection (f) and transferring such text, as so des-
9 ignated, to the end of section 7361 of title 10,
10 United States Code;

11 (7) in subsection (f) of section 7361 of such
12 title, as so designated and transferred, by inserting
13 before “The Secretary” the following: “SETTLE-
14 MENT OF CLAIMS.—”;

15 (8) by designating the text of section 7366 as
16 subsection (g) and transferring such text, as so des-
17 ignated, to the end of section 7361 of title 10,
18 United States Code;

19 (9) in subsection (g) of section 7361 of such
20 title, as so designated and transferred—

21 (A) by inserting before “Not more than”
22 the following: “LIMITATION ON APPROPRIA-
23 TIONS.—”; and

24 (B) by striking out “this chapter” and in-
25 serting in lieu thereof “this section”;

1 (10) by designating the text of section 7367 as
2 subsection (h) and transferring such text, as so des-
3 ignated, to the end of section 7361 of title 10,
4 United States Code;

5 (11) in subsection (h) of section 7361 of such
6 title, as so designated and transferred—

7 (A) by inserting before “Money received”
8 the following: “DISPOSITION OF RECEIPTS.—”;
9 and

10 (B) by striking out “this chapter” in the
11 first sentence and inserting in lieu thereof “this
12 section”;

13 (12) by striking out the section headings for
14 sections 7362, 7363, 7365, 7366, and 7367;

15 (13) by striking out the heading for section
16 7361 and inserting in lieu thereof the following:

17 “§ 7361. Navy support for salvage operations”;

18 and

19 (14) in the table of sections at the beginning of
20 such chapter—

21 (A) by striking out the item relating to
22 section 7361 and inserting in lieu thereof the
23 following:

 “7361. Navy support for salvage operations.”;

24 and

1 (B) by striking out the items relating to
2 sections 7362, 7363, 7365, 7366, and 7367.

3 **Subtitle D—Department of Defense**
4 **Commercial and Industrial Ac-**
5 **tivities**

6 **SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.**

7 (a) CONSOLIDATION AND REVISION OF AUTHOR-
8 ITY.—

9 (1) AUTHORITY.—Subchapter V of chapter 148
10 of title 10, United States Code, as amended by sec-
11 tion 3025(a)(1), is further amended by adding at
12 the end the following:

13 **“§ 2541. Factories and arsenals: manufacture at**

14 “(a) The Secretary of Defense or the Secretary of
15 a military department may have supplies needed for the
16 Department of Defense or such military department, as
17 the case may be, made in factories or arsenals owned by
18 the United States.

19 “(b) The Secretary of Defense or the Secretary of
20 the military department concerned may abolish any
21 United States arsenal that such Secretary considers un-
22 necessary.”

23 (2) TECHNICAL AMENDMENT.—The table of
24 sections at the beginning of subchapter V of such
25 chapter, as amended by section 3025(a)(2), is fur-

1 ther amended by adding at the end the following
 2 new item:

“2541. Factories and arsenals: manufacture at.”.

3 ~~(b) REPEAL OF SUPERSEDED AUTHORITY.—~~

4 ~~(1) ARMY AUTHORITY.—~~

5 ~~(A) REPEAL.—Section 4532 of title 10,~~
 6 ~~United States Code, is repealed.~~

7 ~~(B) CLERICAL AMENDMENT.—The table of~~
 8 ~~sections at the beginning of chapter 433 of such~~
 9 ~~title is amended by striking out the item relat-~~
 10 ~~ing to section 4532.~~

11 ~~(2) AIR FORCE AUTHORITY.—~~

12 ~~(A) REPEAL.—Section 9532 of title 10,~~
 13 ~~United States Code, is repealed.~~

14 ~~(B) CLERICAL AMENDMENT.—The table of~~
 15 ~~sections at the beginning of chapter 933 of such~~
 16 ~~title is amended by striking out the item relat-~~
 17 ~~ing to section 9532.~~

18 **SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED**
 19 **ADVISORY AND ASSISTANCE SERVICES.**

20 ~~(a) FUNDING TO BE IDENTIFIED IN BUDGET.—Sec-~~
 21 ~~tion 1105 of title 31, United States Code, is amended by~~
 22 ~~adding at the end the following new subsection:~~

23 ~~“(g)(1) The Director of the Office of Management~~
 24 ~~and Budget shall establish the funding for consulting serv-~~
 25 ~~ices for each department and agency as a separate object~~

1 class in each budget annually submitted to the Congress
2 under this section.

3 ~~“(2) For purposes of this subsection, consulting serv-~~
4 ~~ices include—~~

5 ~~“(A) management and professional support~~
6 ~~services;~~

7 ~~“(B) studies, analyses, and evaluations;~~

8 ~~“(C) engineering and technical services (exclud-~~
9 ~~ing routine engineering services such as automated~~
10 ~~data processing and architect and engineering con-~~
11 ~~tracts); and~~

12 ~~“(D) research and development.”.~~

13 ~~(b) REPEAL OF SOURCE LAW.—Section 512 of Pub-~~
14 ~~lic Law 102–394 (106 Stat. 1826) is repealed.~~

15 ~~(c) REPEAL OF SUPERSEDED PROVISION.—~~

16 ~~(1) DoD SPECIFIC LAW.—Section 2212 of title~~
17 ~~10, United States Code, is repealed.~~

18 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
19 ~~tions at the beginning of chapter 131 of such title~~
20 ~~is amended by striking out the item relating to sec-~~
21 ~~tion 2212.~~

1 **Subtitle E—Fuel and Energy-**
2 **Related Laws**

3 **SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS**
4 **FOR STORAGE, HANDLING, OR DISTRIBUTION.**
5

6 (a) **REVISION OF AUTHORITY.**—Section 2388 of title
7 10, United States Code, is amended—

8 (1) by striking out subsections (a) and (b) and
9 inserting in lieu thereof the following:

10 “(a) **AUTHORITY TO CONTRACT.**—The Secretary of
11 Defense and the Secretary of a military department may
12 each contract for storage facilities for, or the storage, han-
13 dling, or distribution of, liquid fuels and natural gas.

14 “(b) **PERIOD OF CONTRACT.**—The period of a con-
15 tract entered into under subsection (a) may not exceed
16 5 years. However, the contract may provide options for
17 the Secretary to renew the contract for additional periods
18 of not more than 5 years each, but not for more than a
19 total of 20 years.”; and

20 (2) in subsection (c), by inserting “**OPTION TO**
21 **PURCHASE FACILITY.**—” after “(c)”.

22 (b) **CLERICAL AMENDMENTS.**—

23 (1) **SECTION HEADING.**—The heading of such
24 section is amended to read as follows:

1 **“§ 2388. Liquid fuels and natural gas: contracts for**
 2 **storage, handling, or distribution”.**

3 (2) TABLE OF SECTIONS.—The item relating to
 4 such section in the table of sections at the beginning
 5 of chapter 141 of title 10, United States Code, is
 6 amended to read as follows:

“2388. Liquid fuels and natural gas: contracts for storage, handling, or distribu-
 tion.”.

7 **SEC. 3062. ACQUISITION OF PETROLEUM AND NATURAL**
 8 **GAS: AUTHORITY TO WAIVE PROCEDURES.**

9 (a) ACQUISITION, SALE, AND EXCHANGE OF NATU-
 10 RAL GAS.—Section 2404 of title 10, United States Code,
 11 is amended—

12 (1) in subsection (a)—

13 (A) in the matter above paragraph (1), by
 14 inserting “or natural gas” after “petroleum”;

15 (B) in paragraph (1)—

16 (i) by inserting “or natural gas mar-
 17 ket conditions, as the case may be,” after
 18 “petroleum market conditions”; and

19 (ii) by inserting “or acquisition of
 20 natural gas, respectively,” after “acquisi-
 21 tion of petroleum”; and

22 (C) in paragraph (2), by inserting “or nat-
 23 ural gas, as the case may be,” after “petro-
 24 leum”; and

1 (2) in subsection (b), by inserting “or natural
2 gas” in the second sentence after “petroleum”.

3 (b) ~~EXPANSION OF EXCHANGE AUTHORITY.~~—Sub-
4 section (c) of such section is amended to read as follows:

5 “(c) ~~EXCHANGE AUTHORITY.~~—The Secretary of De-
6 fense may acquire petroleum, petroleum-related services,
7 natural gas, or natural gas-related services by exchange
8 of petroleum, petroleum-related services, natural gas, or
9 natural gas-related services.”.

10 (c) ~~SALE OF PETROLEUM AND NATURAL GAS.~~—Such
11 section is amended—

12 (1) by redesignating subsection (d) as sub-
13 section (e); and

14 (2) by inserting after subsection (c) the follow-
15 ing new subsection (d):

16 “(d) ~~AUTHORITY TO SELL.~~—The Secretary of De-
17 fense may sell petroleum or natural gas of the Department
18 of Defense if the Secretary determines that the sale would
19 be in the public interest. The proceeds of such a sale shall
20 be credited to appropriations of the Department of De-
21 fense for the fiscal year in which received and shall be
22 available for such fiscal year for the acquisition of petro-
23 leum, petroleum-related services, natural gas, or natural
24 gas-related services.”.

25 (d) ~~TECHNICAL AND CLERICAL AMENDMENTS.~~—

1 (1) SUBSECTION CAPTIONS.—Section 2404 of
2 title 10, United States Code, is amended—

3 (A) in subsection (a), by inserting “WAIV-
4 ER AUTHORITY.—” after “(a)”;

5 (B) in subsection (b), by inserting “SCOPE
6 OF WAIVER.—” after “(b)”; and

7 (C) in subsection (e), as redesignated by
8 subsection (c)(1), by inserting “PETROLEUM
9 DEFINED.—” after “(e)”.

10 (2) SECTION HEADING.—The heading of such
11 section is amended to read as follows:

12 **“§ 2404. Acquisition of petroleum and natural gas: au-**
13 **thority to waive contract procedures; ac-**
14 **quisition by exchange; sales authority”.**

15 (3) TABLE OF SECTIONS.—The item relating to
16 such section in the table of sections at the beginning
17 of chapter 141 of title 10, United States Code, is
18 amended to read as follows:

“2404. Acquisition of petroleum and natural gas: authority to waive contract
procedures; acquisition by exchange; sales authority.”.

1 **Subtitle F—Fiscal Statutes**

2 **SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DE-**
3 **PARTMENT TO COVER OBLIGATIONS OF AN-**
4 **OTHER AGENCY OF DEPARTMENT OF DE-**
5 **FENSE.**

6 Subsection ~~(c)(2)~~ of section 3321 of title 31, United
7 States Code, is amended by striking out “military depart-
8 ments of the” and inserting in lieu thereof “The”.

9 **Subtitle G—Miscellaneous**

10 **SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.**

11 Section 2202 of title 10, United States Code, is
12 amended to read as follows:

13 **“§ 2202. Obligation of funds: limitation**

14 “The Secretary of Defense shall prescribe regulations
15 governing the performance within the Department of De-
16 fense of the procurement, production, warehousing, and
17 supply distribution functions, and related functions, of the
18 Department of Defense.”.

19 **SEC. 3082. REPEAL OF PROVISIONS FOR THE ENCOURAGE-**
20 **MENT OF AVIATION.**

21 ~~(a) REPEAL.~~—Chapter 135 of title 10, United States
22 Code, is repealed.

23 ~~(b) CLERICAL AMENDMENT.~~—The tables of chapters
24 at the beginning of subtitle A of such title and the begin-

1 ning of part IV of such subtitle are amended by striking
2 out the item relating to chapter 135.

3 **SEC. 3083. REPEAL OF REQUIREMENTS REGARDING PROD-**
4 **UCT EVALUATION ACTIVITIES.**

5 (a) REPEAL.—Section 2369 of title 10, United States
6 Code, is repealed.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of chapter 139 of such title is amended
9 by striking out the item related to section 2369.

10 **SEC. 3084. REPEAL OF PRICE ADJUSTMENT AUTHORITY**
11 **AND PURCHASE AUTHORITY RELATING TO**
12 **THE PROCUREMENT OF MILK.**

13 (a) REPEAL.—Section 2389 of title 10, United States
14 Code, is repealed.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 141 of such title is amended
17 by striking out the item related to section 2389.

18 **SEC. 3085. CODIFICATION AND REVISION OF LIMITATION**
19 **ON LEASE OF VESSELS, AIRCRAFT, AND VEHI-**
20 **CLES.**

21 (a) LIMITATION.—

22 (1) IN GENERAL.—Chapter 141 of title 10,
23 United States Code, is amended by adding at the
24 end the following new section:

1 **“§ 2410e. Lease of vessels, aircraft, and vehicles**

2 “~~The head of an agency named in paragraph (1), (2),~~
3 ~~(3), or (4) of section 2303(a) of this title may not enter~~
4 ~~into any contract with a term of 18 months or more, or~~
5 ~~extend or renew any contract for a term of 18 months~~
6 ~~or more, for any vessel, aircraft, or vehicle, through a~~
7 ~~lease, charter, or similar agreement without previously~~
8 ~~having considered all costs of such lease (including esti-~~
9 ~~mated termination liability) and determined in writing~~
10 ~~that such lease is in the best interest of the Government.”.~~

11 (2) ~~CLERICAL AMENDMENT.~~—The table of sec-
12 tions at the beginning of such chapter is amended
13 by adding at the end the following:

“2410e. Leases of vessels, aircraft, and vehicles.”.

14 (b) ~~REPEAL OF SUPERSEDED PROVISION.~~—Section
15 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.
16 2401 note) is repealed.

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

2
3
4
5
6 **Subtitle A—Simplified Acquisition Threshold**

7
8 **PART I—ESTABLISHMENT OF THRESHOLD**

9 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.**

10 (a) **TERM DEFINED.**—Section 4(11) of the Office of
11 Federal Procurement Policy Act (41 U.S.C. 403(11)) is
12 amended to read as follows:

13 “(11) The term ‘simplified acquisition threshold’ means \$100,000.”

14
15 (b) **INTERIM REPORTING RULE.**—Until October 1,
16 1996, contracting activities shall continue to report procurement awards with a dollar value of at least \$25,000,
17 but less than \$100,000, in conformity with the procedures
18 for the reporting of a contract award in excess of \$25,000
19 that were in effect on October 1, 1992.

20
21 **PART II—SIMPLIFICATION OF PROCEDURES**

22 **SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.**

23 The Office of Federal Procurement Policy Act (41
24 U.S.C. 401 et seq.) is amended by adding at the end the
25 following new section:

1 “SIMPLIFIED ACQUISITION PROCEDURES

2 “~~SEC. 29.~~ (a) In order to promote efficiency and
3 economy in contracting and to avoid unnecessary burdens
4 for agencies and contractors, the Federal Acquisition Reg-
5 ulation shall provide for special simplified procedures for
6 contracts for acquisition of property and services that are
7 not in excess of the simplified acquisition threshold.

8 “(b) A proposed purchase or contract for an amount
9 above the simplified acquisition threshold may not be di-
10 vided into several purchases or contracts for lesser
11 amounts in order to use the simplified acquisition proce-
12 dures required by subsection (a).

13 “(c) In using simplified acquisition procedures, the
14 head of an executive agency shall promote competition to
15 the maximum extent practicable.”.

16 **SEC. 4012. SMALL BUSINESS RESERVATION.**

17 Section 15(j) of the Small Business Act (15 U.S.C.
18 644(j)) is amended to read as follows:

19 “(j)(1) Each contract for the procurement of goods
20 and services that has an anticipated value not in excess
21 of the simplified acquisition threshold and that is subject
22 to simplified acquisition procedures prescribed pursuant to
23 section 29 of the Office of Federal Procurement Policy
24 Act shall be reserved exclusively for small business con-
25 cerns unless the contracting officer is unable to obtain of-

1 fers from two or more small business concerns that are
2 competitive with market prices and are competitive with
3 regard to the quality and delivery of the goods or services
4 being procured.

5 “(2) In carrying out paragraph (1), a contracting of-
6 ficer shall consider a responsive offer timely received from
7 an eligible small business offeror.

8 “(3) Nothing in paragraph (1) shall be construed as
9 precluding an award of a contract with a value not in ex-
10 cess of the simplified acquisition threshold under the au-
11 thority of section 8(a) of this Act, section 2323 of title
12 10, United States Code, or section 712 of the Business
13 Opportunity Development Reform Act of 1988 (Public
14 Law 100–656; 15 U.S.C. 644 note).

15 “(4) In utilizing procedures referred to in paragraph
16 (1), contracting officers shall, wherever circumstances per-
17 mit, provide for the use of fast payment terms and dis-
18 bursement of payment through electronic fund transfer.”.

19 **SEC. 4013. PROCUREMENT NOTICE.**

20 (a) CONTINUATION OF EXISTING NOTICE THRESH-
21 OLDS.—Subsection (a) of section 18 of the Office of Fed-
22 eral Procurement Policy Act (41 U.S.C. 416) is amend-
23 ed—

1 (1) in paragraph (1), by striking out “the small
2 purchase threshold” each place it appears and in-
3 sserting in lieu thereof “\$25,000”; and

4 (2) in paragraph (3)(B), by inserting after
5 “(B)” the following: “in the case of a contract or
6 order expected to exceed the simplified acquisition
7 threshold.”.

8 (b) CONTENT OF NOTICE.—Subsection (b) of such
9 section is amended—

10 (1) by striking out “and” at the end of para-
11 graph (4);

12 (2) by striking out the period at the end of
13 paragraph (5) and inserting in lieu thereof a semi-
14 colon; and

15 (3) by adding at the end the following:

16 “(6) in the case of a contract in an amount es-
17 timated to exceed the \$25,000 but not to exceed the
18 simplified acquisition threshold—

19 “(A) a description of the procedures to be
20 used in awarding the contract; and

21 “(B) a statement specifying the periods for
22 prospective offerors and the contracting officer
23 to take the necessary preaward and award ac-
24 tions.”.

25 (c) NOTICE UNDER THE SMALL BUSINESS ACT.—

1 (1) CONTINUATION OF EXISTING NOTICE
2 THRESHOLDS.—Subsection (e) of section 8 of the
3 Small Business Act (15 U.S.C. 637) is amended—

4 (A) in paragraph (1), by striking out “the
5 small purchase threshold” each place it appears
6 and inserting in lieu thereof “\$25,000”; and

7 (B) in paragraph (3)(B), by inserting after
8 “(B)” the following: “in the case of a contract
9 or order estimated to exceed the simplified ac-
10 quisition threshold,”.

11 (2) CONTENT OF NOTICE.—Subsection (f) of
12 such section is amended—

13 (A) by striking out “and” at the end of
14 paragraph (4);

15 (B) by striking out the period at the end
16 of paragraph (5) and inserting in lieu thereof a
17 semicolon; and

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

19 “(6) in the case of a contract in an amount es-
20 timated to exceed the \$25,000 but not to exceed the
21 simplified acquisition threshold—

22 “(A) a description of the procedures to be
23 used in awarding the contract; and

24 “(B) a statement specifying the periods for
25 prospective offerors and the contracting officer

1 to take the necessary preaward and award ac-
2 tions.”.

3 **PART III—INAPPLICABILITY OF LAWS TO ACQUI-**
4 **SITIONS NOT IN EXCESS OF SIMPLIFIED AC-**
5 **QUISITION THRESHOLD**

6 **Subpart A—Generally**

7 **SEC. 4021. INAPPLICABILITY OF FUTURE ENACTED PRO-**
8 **CUREMENT LAWS TO CONTRACTS NOT EX-**
9 **CEEDING THE SIMPLIFIED ACQUISITION**
10 **THRESHOLD.**

11 The Office of Federal Procurement Policy Act (41
12 U.S.C. 401 et seq.), as amended by section 4011, is fur-
13 ther amended by adding at the end the following new sec-
14 tion:

15 “INAPPLICABILITY OF CERTAIN LAWS TO CONTRACTS
16 NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

17 “SEC. 30. (a) IN GENERAL.—The applicability of a
18 provision of law described in subsection (b) to contracts
19 not in excess of the simplified acquisition threshold may
20 be waived on a class basis in the Federal Acquisition Reg-
21 ulation. Such a waiver shall not apply to a provision of
22 law that expressly refers to this section and prohibits the
23 waiver of that provision of law.

24 “(b) REFERENCED LAW.—A provision of law referred
25 to in subsection (a) is any provision of law enacted after
26 the date of the enactment of the Federal Acquisition

1 Streamlining Act of 1993 that, as determined by the Ad-
2 ministrator for Federal Procurement Policy, sets forth
3 policies, procedures, requirements, or restrictions for the
4 procurement of property or services by the Federal Gov-
5 ernment.”.

6 **Subpart B—Armed Services Acquisitions**

7 **SEC. 4031. INAPPLICABILITY OF REQUIREMENT FOR CON-**
8 **TRACT CLAUSE REGARDING CONTINGENT**
9 **FEEES.**

10 Section 2306(b) of title 10, United States Code, is
11 amended by adding at the end the following: “This sub-
12 section does not apply to a contract that is not in excess
13 of the simplified acquisition threshold.”.

14 **SEC. 4032. INAPPLICABILITY OF PROHIBITION ON LIMITING**
15 **SUBCONTRACTOR DIRECT SALES TO THE**
16 **UNITED STATES.**

17 Section 2402 of title 10, United States Code, is
18 amended by adding at the end the following new sub-
19 section:

20 “(c) This section does not apply to a contract that
21 is not in excess of the simplified acquisition threshold (as
22 defined in section 4(11) of the Office of Federal Procure-
23 ment Policy Act (41 U.S.C. 403(11))).”.

1 **SEC. 4033. INAPPLICABILITY OF AUTHORITY TO EXAMINE**
2 **BOOKS AND RECORDS OF CONTRACTORS.**

3 Section 2313 of title 10, United States Code, as
4 amended by section 2201, is further amended by adding
5 at the end of subsection (e) the following:

6 “(2) A contract that is not in excess of the sim-
7 plified acquisition threshold.”.

8 **SEC. 4034. INAPPLICABILITY OF REQUIREMENT TO IDEN-**
9 **TIFY SUPPLIERS AND SOURCES OF SUPPLIES.**

10 Section 2384(b) of title 10, United States Code, is
11 amended by adding at the end the following new para-
12 graph:

13 “(3) The regulations prescribed pursuant to para-
14 graph (1) do not apply to a contract that does not exceed
15 the simplified acquisition threshold (as defined in section
16 4(11) of the Office of Federal Procurement Policy Act (41
17 U.S.C. 403(11))).”.

18 **SEC. 4035. INAPPLICABILITY OF PROHIBITION AGAINST**
19 **DOING BUSINESS WITH CERTAIN OFFERORS**
20 **OR CONTRACTORS.**

21 Section 2393(d) of title 10, United States Code, is
22 amended in the second sentence by striking out “above”
23 and all that follows and inserting in lieu thereof “in excess
24 of the simplified acquisition threshold (as defined in sec-
25 tion 4(11) of the Office of Federal Procurement Policy
26 Act (41 U.S.C. 403(11))).”.

1 **SEC. 4036. INAPPLICABILITY OF PREFERENCE FOR USE OF**
2 **UNITED STATES VESSELS FOR TRANSPORT-**
3 **ING SUPPLIES OF THE ARMED FORCES.**

4 Section 2631 of title 10, United States Code, is
5 amended by adding at the end the following: “The first
6 sentence does not apply to a contract for the transpor-
7 tation of those supplies by sea if the contract does not
8 exceed the simplified acquisition threshold (as defined in
9 section 4(11) of the Office of Federal Procurement Policy
10 Act (41 U.S.C. 403(11))).”.

11 **Subpart C—Civilian Agency Acquisitions**

12 **SEC. 4041. INAPPLICABILITY OF REQUIREMENT FOR CON-**
13 **TRACT CLAUSE REGARDING CONTINGENT**
14 **FEES.**

15 Section 304(a) of the Federal Property and Adminis-
16 trative Services Act of 1949 (41 U.S.C. 254(a)) is amend-
17 ed by adding at the end the following: “The preceding sen-
18 tence does not apply to a contract that is not in excess
19 of the simplified acquisition threshold.”.

20 **SEC. 4042. INAPPLICABILITY OF PROHIBITION ON LIMITING**
21 **SUBCONTRACTOR DIRECT SALES TO THE**
22 **UNITED STATES.**

23 Section 303G of the Federal Property and Adminis-
24 trative Services Act of 1949 (41 U.S.C. 253g) is amended
25 by adding at the end the following new subsection:

1 “(c) This section does not apply to a contract that
2 is not in excess of the simplified acquisition threshold.”.

3 **SEC. 4043. INAPPLICABILITY OF AUTHORITY TO EXAMINE**
4 **BOOKS AND RECORDS OF CONTRACTORS.**

5 Section 304B of the Federal Property and Adminis-
6 trative Services Act of 1949, as added by section 2251(a),
7 is amended by adding at the end of subsection (c) the fol-
8 lowing:

9 “(2) A contract that is not in excess of the sim-
10 plified acquisition threshold.”.

11 **Subpart D—Acquisitions Generally**

12 **SEC. 4051. INAPPLICABILITY OF LIMITATION ON USE OF**
13 **FUNDS TO INFLUENCE CERTAIN FEDERAL**
14 **ACTIONS.**

15 Section 1352(e)(2)(B) of title 31, United States
16 Code, is amended by striking out “\$100,000” and insert-
17 ing in lieu thereof “the simplified acquisition threshold (as
18 defined in section 4(11) of the Office of Federal Procure-
19 ment Policy Act (41 U.S.C. 403(11)))”.

20 **SEC. 4052. INAPPLICABILITY OF REQUIREMENT FOR CON-**
21 **TRACT CLAUSE RELATING TO KICKBACKS.**

22 Section 7 of the Anti-Kickback Act of 1986 (41
23 U.S.C. 57) is amended by adding at the end the following
24 new subsection:

1 “(d) Subsections (a) and (b) do not apply to a prime
2 contract that is not in excess of the simplified acquisition
3 threshold (as defined in section 4(11) of the Office of Fed-
4 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

5 **SEC. 4053. INAPPLICABILITY OF THE MILLER ACT TO CON-**
6 **TRACTS BELOW THE SIMPLIFIED ACQUI-**
7 **SION THRESHOLD.**

8 (a) IN GENERAL.—

9 (1) CONTRACTS NOT EXCEEDING SIMPLIFIED
10 ACQUISITION THRESHOLD.—The Act of August 24,
11 1935 (40 U.S.C. 270a et seq.), commonly referred
12 to as the “Miller Act”, is amended by adding at the
13 end the following new section:

14 “SEC. 5. This Act does not apply to a contract in
15 an amount that is not in excess of the simplified acqui-
16 sition threshold (as defined in section 4(11) of the Office
17 of Federal Procurement Policy Act (41 U.S.C.
18 403(11))).”.

19 (2) CONFORMING AMENDMENT.—Subsection (a)
20 of the first section of such Act is amended by strik-
21 ing out “, exceeding \$25,000 in amount,”.

22 (b) ALTERNATIVE PAYMENT PROTECTIONS.—

23 (1) REGULATIONS REQUIRED.—The Federal
24 Acquisition Regulation shall provide alternatives to
25 payment bonds as payment protections for suppliers

1 of labor and materials on contracts referred to in
2 paragraph (2).

3 ~~(2) COVERED CONTRACTS.~~—The protections re-
4 quired by paragraph (1) shall apply with respect to
5 contracts referred to in subsection (a) of the first
6 section of the Miller Act that are in excess of
7 \$25,000 but not in excess of the simplified acquisi-
8 tion threshold (as defined in section 4(11) of the Of-
9 fice of Federal Procurement Policy Act (41 U.S.C.
10 403(11))).

11 ~~(3) MILLER ACT REFERENCE.~~—The Miller Act
12 referred to in paragraph (2) means the Act of Au-
13 gust 24, 1935 (40 U.S.C. 270a et seq.), commonly
14 referred to as the “Miller Act”.

15 **SEC. 4054. INAPPLICABILITY OF CONTRACT WORK HOURS**
16 **AND SAFETY STANDARDS ACT.**

17 ~~(a) IN GENERAL.~~—Section 103 of the Contract Work
18 Hours and Safety Standards Act (40 U.S.C. 329) is
19 amended by adding at the end the following new sub-
20 section:

21 ~~“(c) This title does not apply to a contract in an~~
22 ~~amount that is not in excess of the simplified acquisition~~
23 ~~threshold (as defined in section 4(11) of the Office of Fed-~~
24 ~~eral Procurement Policy Act (41 U.S.C. 403(11))).”.~~

1 (b) CONFORMING AMENDMENT.—Section 107(a) of
2 such Act (40 U.S.C. 333(a)) is amended by inserting after
3 “It shall be a condition of each contract” the following:
4 “(other than a contract referred to in section 103(c))”.

5 **SEC. 4055. INAPPLICABILITY OF THE DRUG-FREE WORK-**
6 **PLACE ACT OF 1988.**

7 Section 5152(a)(1) of the Drug-Free Workplace Act
8 of 1988 (subtitle D of title V of the Anti-Drug Abuse Act
9 of 1988; Public Law 100-690; 41 U.S.C. 701(a)(1)) is
10 amended by striking out “of \$25,000 or more from any
11 Federal agency” and inserting in lieu thereof “in excess
12 of the simplified acquisition threshold (as defined in sec-
13 tion 4(11) of such Act (41 U.S.C. 403(11))) by any Fed-
14 eral agency”.

15 **SEC. 4056. INAPPLICABILITY OF A REQUIREMENT IN THE**
16 **MERCHANT MARINE ACT, 1936, TO SHIP ON**
17 **AMERICAN-FLAG COMMERCIAL VESSELS.**

18 Section 901(b) of the Merchant Marine Act, 1936 (46
19 U.S.C. 1241(b)) is amended by adding at the end the fol-
20 lowing new paragraph:

21 “(3) Paragraph (1) does not apply to a contract for
22 transportation on ocean vessels in an amount that is not
23 in excess of the simplified acquisition threshold (as defined
24 in section 4(11) of the Office of Federal Procurement Pol-
25 icy Act (41 U.S.C. 403(11))). The gross tonnage trans-

1 ported under such a contract may not be counted for pur-
2 poses of determining the minimum gross tonnage required
3 to be transported on privately owned United States-flag
4 commercial vessels or for purposes of satisfying such re-
5 quirement.”.

6 **SEC. 4057. INAPPLICABILITY OF CERTAIN PROCUREMENT**
7 **INTEGRITY REQUIREMENTS.**

8 (a) CERTIFICATION REQUIREMENT.—Subsection
9 (e)(7)(A) of section 18 of the Office of Federal Procure-
10 ment Policy Act (41 U.S.C. 423) is amended by striking
11 out “\$100,000” and inserting in lieu thereof “the sim-
12 plified acquisition threshold”.

13 (b) CONTRACT CLAUSE REQUIREMENT.—Subsection
14 (g)(1) of such section is amended by inserting after
15 “awarded by a Federal agency” the following: “(other
16 than a contract in an amount that is not in excess of the
17 simplified acquisition threshold)”.

18 **PART IV—CONFORMING AMENDMENTS**

19 **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

20 (a) SIMPLIFIED ACQUISITION PROCEDURES.—Sec-
21 tion 2304(g) of title 10, United States Code, is amended—

22 (1) in paragraph (1), by striking out “small
23 purchases of property and services” and inserting in
24 lieu thereof “purchases of property and services not
25 in excess of the simplified acquisition threshold”;

1 (2) by striking out paragraph (2);

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

4 (4) in paragraph (2), as so redesignated—

5 (A) by striking out “small purchase
6 threshold” and inserting in lieu thereof “sim-
7 plified acquisition threshold”; and

8 (B) by striking out “small purchase proce-
9 dures” and inserting in lieu thereof “simplified
10 procedures”; and

11 (5) in paragraph (3), as redesignated by para-
12 graph (3), by striking out “small purchase proce-
13 dures” and inserting in lieu thereof “simplified pro-
14 cedures”.

15 (b) SOLICITATION CONTENT REQUIREMENT.—Sec-
16 tion 2305(a)(2) of title 10, United States Code, is amend-
17 ed by striking out “small purchases)” in the matter above
18 subparagraph (A) and inserting in lieu thereof “purchases
19 not in excess of the simplified acquisition threshold)”.

20 (c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A)
21 of title 10, United States Code, is amended by striking
22 out “small purchase threshold” and inserting in lieu there-
23 of “simplified acquisition threshold”.

1 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

2 (a) SIMPLIFIED ACQUISITION PROCEDURES.—Sec-
3 tion 303(g) of the Federal Property and Administrative
4 Services Act of 1949 (41 U.S.C. 253(g)) is amended—

5 (1) in paragraph (1), by striking out “small
6 purchases of property and services” and inserting in
7 lieu thereof “purchases of property and services not
8 in excess of the simplified acquisition threshold”;

9 (2) by striking out paragraph (2);

10 (3) by redesignating paragraphs (3), (4), and
11 (5) as paragraphs (2), (3), and (4), respectively;

12 (4) in paragraph (2), as so redesignated—

13 (A) by striking out “small purchase
14 threshold” and inserting in lieu thereof “sim-
15 plified acquisition threshold”; and

16 (B) by striking out “small purchase proce-
17 dures” and inserting in lieu thereof “simplified
18 procedures”;

19 (5) in paragraph (3), as redesignated by para-
20 graph (3), by striking out “small purchase proce-
21 dures” and inserting in lieu thereof “simplified pro-
22 cedures”; and

23 (6) in paragraph (5), as redesignated by para-
24 graph (3), by striking out “the term ‘small purchase
25 threshold’ has the meaning” and inserting in lieu

1 (b) ~~USE OF SIMPLIFIED ACQUISITION THRESHOLD~~
2 ~~TERM.—Section 8(d)(2)(A) of the Small Business Act (15~~
3 ~~U.S.C. 637(d)(2)(A)) is amended by striking out “small~~
4 ~~purchase threshold” and inserting in lieu thereof “sim-~~
5 ~~plified acquisition threshold”.~~

6 **PART V—REVISION OF REGULATIONS**

7 **SEC. 4081. REVISION REQUIRED.**

8 (a) ~~FEDERAL ACQUISITION REGULATION.—The Fed-~~
9 ~~eral Acquisition Regulatory Council established by section~~
10 ~~25(a) of the Office of Federal Procurement Policy Act (41~~
11 ~~U.S.C. 421(a)) shall review the Federal Acquisition Regu-~~
12 ~~lation to identify regulations that are applicable to acquisi-~~
13 ~~tions in excess of a specified amount that is less than~~
14 ~~\$100,000. The Council shall amend the regulations so~~
15 ~~identified as necessary to provide that such regulations do~~
16 ~~not apply to acquisitions that are not in excess of the sim-~~
17 ~~plified acquisition threshold. The preceding sentence does~~
18 ~~not apply in the case of a regulation for which such an~~
19 ~~amendment would not be in the national interest, as deter-~~
20 ~~mined by the Council.~~

21 (b) ~~SUPPLEMENTAL REGULATIONS.—The head of~~
22 ~~each Federal agency that has issued regulations, policies,~~
23 ~~or procedures referred to in subsection (c)(2) of the Office~~
24 ~~of Federal Procurement Policy Act (41 U.S.C. 421(c)(2))~~
25 ~~shall identify any such regulations, policies, or procedures~~

1 that are applicable to acquisitions in excess of a specified
2 amount that is less than \$100,000. The agency head shall
3 amend the regulations so identified as necessary to provide
4 that such regulations, policies, and procedures do not
5 apply to acquisitions that are not in excess of the sim-
6 plified acquisition threshold. The preceding sentence does
7 not apply in the case of a regulation, policy, or procedure
8 for which such an amendment would not be in the national
9 interest, as determined by the agency head.

10 (c) COMPLETION OF ACTIONS.—All actions under
11 this section shall be completed not later than 180 days
12 after the date of the enactment of this Act.

13 (d) DEFINITIONS.—In this section:

14 (1) The term “simplified acquisition threshold”
15 has the meaning given such term in section 4(11) of
16 the Office of Federal Procurement Policy Act (41
17 U.S.C. 403(11)), as amended by section 4001.

18 (2) The term “Federal agency” has the mean-
19 ing given such term in section 3(b) of the Federal
20 Property and Administrative Services Act of 1949
21 (41 U.S.C. 472(b)).

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

3 **SEC. 4101. ARMED SERVICES ACQUISITIONS.**

4 (a) ~~INAPPLICABILITY OF CERTAIN LABOR LAWS TO~~
5 ~~CONSTRUCTION OF NAVAL VESSELS.~~—Section 7299 of
6 title 10, United States Code, is amended to read as fol-
7 lows: “No contract for the construction, alteration, fur-
8 nishing, or equipping of a naval vessel shall be subject to
9 the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly
10 referred to as the ‘Davis-Bacon Act’, or to the Service
11 Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the
12 President determines that such requirement is in the in-
13 terest of national defense.”.

14 (b) ~~CLERICAL AMENDMENTS.~~—(1) The heading of
15 such section is amended to read as follows:

16 “**§ 7299. Contracts: applicability of certain labor**
17 **laws**”.

18 (2) The item relating to such section in the table of
19 sections at the beginning of chapter 633 of title 10, United
20 States Code, is amended to read as follows:

 “7299. Contracts: applicability of certain labor laws.”.

21 **SEC. 4102. ACQUISITIONS GENERALLY.**

22 (a) ~~REPEAL OF EXECUTED REPORTING REQUIRE-~~
23 ~~MENT.~~—Section 306 of the Trade Agreements Act of 1979
24 (19 U.S.C. 2516) is repealed.

1 (b) ~~WALSH HEALEY ACT.~~—

2 (1) ~~REPEAL OTHER THAN FOR CERTAIN DEFINI-~~
3 ~~NITIONAL PURPOSES.~~—The Act of June 30, 1936
4 (41 U.S.C. 35 et seq.), commonly referred to as the
5 “Walsh-Healey Act”, is amended to read as follows:
6 “SECTION 1. (a) The Secretary of Labor may pre-
7 scribe in regulations the standards for determining wheth-
8 er a contractor is a manufacturer of or a regular dealer
9 in materials, supplies, articles, or equipment to be manu-
10 factured or used in the performance of a contract entered
11 into by any executive department, independent establish-
12 ment, or other agency or instrumentality of the United
13 States, or by the District of Columbia, or by any corpora-
14 tion all the stock of which is beneficially owned by the
15 United States, for the manufacture or furnishing of mate-
16 rials, supplies, articles, and equipment.

17 “(b) Any interested person shall have the right of ju-
18 dicial review of any legal question regarding the interpre-
19 tation of the terms ‘regular dealer’ and ‘manufacturer’,
20 as defined pursuant to subsection (a).”

21 (2) ~~CONFORMING AMENDMENT.~~—Section
22 2304(h) of title 10, United States Code, is amended
23 to read as follows:

24 “(h) For the purposes of the Act entitled ‘An Act
25 relating to the rate of wages for laborers and mechanics

1 employed on public buildings of the United States and the
2 District of Columbia by contractors and subcontractors,
3 and for other purposes', approved March 3, 1931 (com-
4 monly referred to as the 'Davis-Bacon Act') (40 U.S.C.
5 276a et seq.), purchases or contracts awarded after using
6 procedures other than sealed bid procedures shall be treat-
7 ed as if they were made with sealed bid procedures.'".

8 (c) REPEAL OF REDUNDANT REQUIREMENT RE-
9 GARDING APPLICABILITY OF THE DAVIS-BACON ACT AND
10 THE WALSH-HEALEY ACT.—Section 308 of the Federal
11 Property and Administrative Services Act of 1949 (41
12 U.S.C. 258) is repealed.

13 (d) PROHIBITION ON CONVICT LABOR AND PRISON
14 GOODS.—No agency of the United States shall purchase
15 any goods, wares or merchandise whose transportation in
16 interstate commerce, or whose importation, is prohibited
17 by section 1761 of title 18, United States Code. The pre-
18 ceding sentence does not apply to a contract in an amount
19 that does not exceed the simplified acquisition threshold
20 (as defined in section 4(11) of the Office of Federal Pro-
21 curement Policy Act (41 U.S.C. 403(11))).

22 **SEC. 4103. DIRECT CONTRACTING WITH SMALL BUSI-**
23 **NESSES.**

24 Section 8(a)(1) of the Small Business Act (15 U.S.C.
25 637(a)(1)) is amended in subparagraph (A) by striking

1 out “In any case in which the Administration certifies”
2 and all that follows through “may be agreed upon between
3 the Administration and the procurement officer.” and in-
4 serting in lieu thereof the following: “In any case in which
5 the Administration certifies to any officer of the Govern-
6 ment having procurement powers that the Administration
7 is competent and responsible to perform any specific Gov-
8 ernment procurement contract to be awarded by any such
9 officer, such officer shall be authorized in his discretion
10 (i) to award such procurement contract to the Administra-
11 tion upon such terms and conditions as may be agreed
12 upon between the Administration and the procurement of-
13 ficer, or (ii) to award such procurement contract directly
14 to a socially and economically disadvantaged small busi-
15 ness concern designated by the Administration, except
16 that such contract may not be awarded directly to that
17 small business concern if the small business concern re-
18 quests that the award be made through the Administra-
19 tion.”.

1 **Subtitle C—Miscellaneous**
2 **Acquisition Laws**

3 **SEC. 4151. REPEAL OF OBSOLETE LAWS RELATING TO PRO-**
4 **CUREMENT OF NAVAL AIRCRAFT AND COM-**
5 **PONENTS.**

6 (a) AUTHORIZED NUMBER.—Section 7341 of title
7 10, United States Code, is repealed.

8 (b) CONSTRUCTION OR MANUFACTURE IN FEDERAL
9 GOVERNMENT PLANTS.—

10 (1) MINIMUM PERCENTAGE.—Section 7342 of
11 title 10, United States Code, is repealed.

12 (2) AUTHORIZATION UNDER CERTAIN CIR-
13 CUMSTANCES.—Section 7343 of title 10, United
14 States Code, is repealed.

15 (c) ANNUAL REPORT OF NAVY AIRCRAFT REQUIRE-
16 MENTS.—Section 7345 of title 10, United States Code, is
17 repealed.

18 (d) CLERICAL AMENDMENTS.—The table of sections
19 at the beginning of chapter 635 of title 10, United States
20 Code, is amended by striking out the items relating to sec-
21 tions 7341, 7342, 7343, and 7345.

1 **SEC. 4152. REVISION AND CODIFICATION OF PROHIBITION**
2 **ON USE OF FUNDS FOR DOCUMENTING ECO-**
3 **NOMIC OR EMPLOYMENT IMPACT OF CER-**
4 **TAIN ACQUISITION PROGRAMS.**

5 (a) **IN GENERAL.**—Subchapter I of chapter 134 of
6 title 10, United States Code, is amended by adding at the
7 end the following new section:

8 **“§ 2246. Prohibition on use of funds for documenting**
9 **economic or employment impact of cer-**
10 **tain acquisition programs**

11 “No funds appropriated by the Congress may be obli-
12 gated or expended to assist any contractor of the Depart-
13 ment of Defense in preparing any material, report, lists,
14 or analysis with respect to the actual or projected eco-
15 nomic or employment impact in a particular State or con-
16 gressional district of an acquisition program for which all
17 research, development, testing, and evaluation has not
18 been completed.”.

19 (b) **CLERICAL AMENDMENT.**—The table of sections
20 at the beginning of such subchapter is amended by adding
21 at the end the following new item:

“2246. Prohibition on use of funds for documenting economic or employment
impact of certain acquisition programs.”.

1 **SEC. 4153. RESTRICTION ON USE OF NONCOMPETITIVE**
2 **PROCEDURES FOR PROCUREMENT FROM A**
3 **PARTICULAR SOURCE.**

4 (a) ARMED SERVICES ACQUISITIONS.—Section 2304
5 of title 10, United States Code, as amended by section
6 1005(b), is further amended—

7 (1) in subsection (c)(5), by inserting “subject to
8 subsection (j),” after “(5)”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(j)(1) It is the policy of Congress that no legislation
12 should be enacted that requires a procurement to be made
13 from a specified non-Federal Government source.

14 “(2) A provision of law may not be construed as re-
15 quiring a procurement to be made from a specified non-
16 Federal Government source unless that provision of law—

17 “(A) specifically refers to this subsection;

18 “(B) specifically identifies the particular non-
19 Federal Government source involved; and

20 “(C) specifically states that the procurement
21 from that source is required by such provision of law
22 in contravention of the policy set forth in paragraph
23 (1).”.

24 (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303
25 of the Federal Property and Administrative Services Act
26 of 1949 (41 U.S.C. 253) is amended—

1 (1) in subsection (c)(5), by inserting “subject to
2 subsection (h),” after “(5)”; and

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

5 “(h)(1) It is the policy of Congress that no legislation
6 should be enacted that requires a procurement to be made
7 from a specified non-Federal Government source.

8 “(2) A provision of law may not be construed as re-
9 quiring a procurement to be made from a specified non-
10 Federal Government source unless that provision of law—

11 “(A) specifically refers to this subsection;

12 “(B) specifically identifies the particular non-
13 Federal Government source involved; and

14 “(C) specifically states that the procurement
15 from that source is required by such provision of law
16 in contravention of the policy set forth in paragraph
17 (1).”.

18 **TITLE V—INTELLECTUAL**

19 **PROPERTY**

20 **Subtitle A—Technology Transfer**

21 **SEC. 5001. COPYRIGHT PROTECTION FOR COMPUTER PRO-**

22 **GRAMS OF THE FEDERAL GOVERNMENT.**

23 (a) GENERAL AUTHORITY TO COPYRIGHT.—Section
24 15 of the Stevenson-Wydler Technology Innovation Act of
25 1980 (15 U.S.C. 3710d) is amended—

1 (1) by redesignating subsections (b) and (c) as
2 subsections (c) and (d), respectively; and

3 (2) by inserting after subsection (a) the follow-
4 ing new subsection (b):

5 “(b) RIGHTS TO COMPUTER PROGRAMS PREPARED
6 BY GOVERNMENT EMPLOYEES.—(1) For purposes of title
7 17, United States Code—

8 “(A) a computer program prepared by an offi-
9 cer or employee of the Federal Government in the
10 course of the officer’s or employee’s official duties
11 shall be considered as a work made for hire within
12 the meaning of paragraph (1) of the definition of the
13 term ‘work made for hire’ set forth in section 101
14 of such title; and

15 “(B) notwithstanding section 105 of such title,
16 the Federal Government shall be considered the au-
17 thor of the computer program for purposes of sec-
18 tion 201(b) of such title.

19 “(2)(A) If the Federal agency concerned does not in-
20 tend to register a copyright of the computer program or
21 otherwise to promote the commercialization of the com-
22 puter program, the Federal agency may enter into an
23 agreement with the officer or employee of the Federal
24 Government who prepared the computer program to allow
25 such officer or employee to own a copyright protecting

1 such computer program under title 17, United States
2 Code.

3 ~~“(B) The agreement shall be a written instrument~~
4 ~~that satisfies the requirements of section 201(b) of title~~
5 ~~17, United States Code.~~

6 ~~“(C) The agreement shall include—~~

7 ~~“(i) a reservation for the Federal Government~~
8 ~~of a nonexclusive, nontransferable, irrevocable, paid-~~
9 ~~up license to exercise all rights under the copyright~~
10 ~~by or on behalf of the Federal Government through-~~
11 ~~out the world; and~~

12 ~~“(ii) such other reservations as the head of the~~
13 ~~Federal agency concerned considers necessary to en-~~
14 ~~sure distribution and utilization of the computer pro-~~
15 ~~gram.~~

16 ~~“(3) In this subsection, the term ‘computer program’~~
17 ~~has the meaning given such term in section 101 of title~~
18 ~~17, United States Code.”.~~

19 ~~(b) WORKS IN CONNECTION WITH COOPERATIVE RE-~~
20 ~~SEARCH AND DEVELOPMENT AGREEMENTS.—~~

21 ~~(1) COPYRIGHT PROTECTION FOR THE UNITED~~
22 ~~STATES.—Section 12 of the Stevenson-Wydler Tech-~~
23 ~~nology Innovation Act of 1980 (15 U.S.C. 3710a) is~~
24 ~~amended by adding at the end the following new~~
25 ~~subsection:~~

1 ~~“(h) COPYRIGHT OF COMPUTER PROGRAMS.—(1)~~
2 Notwithstanding section 105 of title 17, United States
3 Code, a Federal agency may secure, on behalf of the
4 United States as author or proprietor, copyright protec-
5 tion for any computer program prepared by an employee
6 of the Federal Government in the course of work under,
7 or work related to, a cooperative research and development
8 agreement entered into by such Federal agency under the
9 authority of subsection (a)(1) or under any similar author-
10 ity.

11 ~~“(2) A Federal agency may grant or agree to grant~~
12 in advance to a collaborating party licenses or assignments
13 for a copyright of a computer program registered pursuant
14 to paragraph (1), or options thereto, retaining—

15 ~~“(A) a nonexclusive, nontransferable, irrev-~~
16 ~~ocable, paid-up license to reproduce, adapt, trans-~~
17 ~~late, distribute, and publicly perform or display the~~
18 ~~computer program throughout the world by or on~~
19 ~~behalf of the Federal Government; and~~

20 ~~“(B) such other rights that the Federal agency~~
21 ~~deems appropriate.”.~~

22 ~~(2) COMPUTER PROGRAM DEFINED.—Sub-~~
23 ~~section (d) of such section is amended—~~

24 ~~(A) by striking out “section—” and insert-~~
25 ~~ing in lieu thereof “section:”;~~

1 (B) by capitalizing the initial letter of the
2 first word in each of paragraphs (1), (2), and
3 (3);

4 (C) by striking out the semicolon at the
5 end of paragraph (1) and inserting in lieu
6 thereof a period;

7 (D) in paragraph (2), by striking out “;
8 and” at the end and inserting in lieu thereof a
9 period; and

10 (E) by adding at the end the following new
11 paragraph:

12 “(5) The term ‘computer program’ has the
13 meaning given such term in section 101 of title 17,
14 United States Code.”.

15 **SEC. 5002. USE OF COPYRIGHTED WORKS OF THE FEDERAL**
16 **GOVERNMENT.**

17 Section 12 of the Stevenson-Wydler Technology Inno-
18 vation Act of 1980 (15 U.S.C. 3710a) is amended—

19 (1) in subsection (a)—

20 (A) in paragraph (1)—

21 (i) by inserting “or copyrighted
22 works” after “(including licensees of inven-
23 tions”;

24 (ii) by striking out “and” at the end;

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

4 (C) by adding at the end the following new
5 paragraph:

6 “~~(3) to negotiate licensing agreements consist-~~
7 ent with section 207 of title 35, United States Code,
8 or under other authorities (in the case of a Govern-
9 ment-owned, contractor-operated laboratory, subject
10 to subsection (c) of this section) for copyrighted
11 works owned by the Federal Government pursuant
12 to subsection (h) or copyrighted works that may be
13 voluntarily assigned to the Federal Government.”;
14 and

15 ~~(2) in subsection (b)—~~

16 (A) by striking out paragraphs (2) and (3)
17 and inserting in lieu thereof the following:

18 “~~(2) grant or agree to grant in advance, to a~~
19 collaborating party—

20 (A) patent licenses or assignments, or op-
21 tions thereto, in any invention made in whole or
22 in part by a laboratory employee under the
23 agreement, retaining—

24 (i) a nonexclusive, nontransferable,
25 irrevocable, paid-up license to practice the

1 invention, or have the invention practiced,
2 throughout the world by or on behalf of
3 the Government; and

4 “(ii) such other rights as the Federal
5 laboratory deems appropriate; and

6 “(B) copyright licenses or assignments, or
7 options thereto, in any copyrighted work pre-
8 pared in whole or in part by a laboratory em-
9 ployee under the agreement, retaining—

10 “(i) a nonexclusive, nontransferable,
11 irrevocable, paid-up license to exercise all
12 rights under the copyright, or have all
13 rights under the copyright exercised,
14 throughout the world by or on behalf of
15 the Government; and

16 “(ii) such other rights as the Federal
17 laboratory deems appropriate;

18 “(3) waive in advance, in whole or in part, any
19 right of ownership which the Federal Government
20 may have to—

21 “(A) any subject invention made under the
22 agreement by a collaborating party or employee
23 of a collaborating party, subject to reservation
24 by the Government of a nonexclusive, irrev-
25 ocable, paid-up license to practice the invention,

1 or have the invention practiced, throughout the
2 world by or on behalf of the Government; or

3 ~~“(B) any subject copyrighted work pre-~~
4 ~~pared under the agreement by a collaborating~~
5 ~~party or employee of a collaborating party, sub-~~
6 ~~ject to reservation by the Government of a~~
7 ~~nonexclusive, irrevocable, paid-up license to re-~~
8 ~~produce the copyrighted work, or have the copy-~~
9 ~~righted work reproduced, throughout the world~~
10 ~~by or on behalf of the Government;”;~~

11 ~~(B) by striking out paragraph (5) and in-~~
12 ~~serting in lieu thereof the following:~~

13 ~~“(5) to the extent consistent with any applica-~~
14 ~~ble agency requirements and standards of conduct,~~
15 ~~permit an employee or former employees of the lab-~~
16 ~~oratory to participate in efforts to commercialize an~~
17 ~~invention that the employee or former employee~~
18 ~~made, or a copyrighted work that the employee or~~
19 ~~former employee prepared, while in the service of the~~
20 ~~United States (notwithstanding that such employee~~
21 ~~or former employee may have received royalties pur-~~
22 ~~suant to section 14); but only if such employee or~~
23 ~~former employee did not participate in the selection~~
24 ~~of the collaborating party to the relevant cooperative~~
25 ~~research and development agreement or in the nego-~~

1 tiation of a licensing agreement under which the in-
2 vention or copyrighted work, as the case may be, is
3 being commercialized.”; and

4 (C) in the matter following paragraph

5 (5)—

6 (i) by inserting “or copyrighted work”
7 after “any invention”; and

8 (ii) in clause (i), by inserting “or to
9 authors of copyrighted works” after “in-
10 ventors”.

11 **SEC. 5003. DISTRIBUTION OF ROYALTIES RECEIVED BY**
12 **FEDERAL AGENCIES.**

13 (a) **COPYRIGHTED WORKS.**—Section 14 of the Ste-
14 venson-Wydler Technology Innovation Act of 1980 (15
15 U.S.C. 3710c) is amended—

16 (1) in subsection (a)—

17 (A) in the matter above subparagraph (A),
18 by striking out “inventions under agreements”
19 and all that follows through “produced the in-
20 vention” and inserting in lieu thereof “an in-
21 vention or copyrightable work under an agree-
22 ment entered into by a Government-operated
23 Federal laboratory under section 12, and an in-
24 vention or copyrightable work of a Government-
25 operated Federal laboratory licensed under sec-

1 tion 207 of title 35, United States Code, or
2 under any other provision of law, shall be re-
3 tained by the agency whose laboratory produced
4 the invention or copyrighted work”;

5 (B) in paragraph (1)(A)—

6 (i) in clause (i)—

7 (I) in the first sentence, by strik-
8 ing out “inventor” and all that follows
9 and inserting in lieu thereof “inventor
10 or copyrighted work to the author (or
11 the co-inventors or co-authors) if the
12 inventor or author (or each such co-
13 inventor or co-author) has assigned
14 his or her rights in the invention or
15 copyrighted work to the United
16 States.”; and

17 (II) by striking out the second
18 sentence;

19 (ii) in clause (ii)—

20 (I) by inserting “or authors”
21 after “inventors” in the matter above
22 subclause (I);

23 (II) by striking out “inventor,”
24 in subclauses (I) and (II) and insert-

1 ing in lieu thereof “inventor or au-
2 thor”;

3 (III) by inserting “or author’s
4 copyrighted work” in subclauses (I)
5 and (II) after “inventor’s invention”;

6 (IV) in subclause (III), by insert-
7 ing “and authors” after “such inven-
8 tors”; and

9 (V) in subclause (IV), by striking
10 out “licensed invention” and all that
11 follows and inserting in lieu thereof
12 “licensed invention between the time
13 of the filing of the patent application
14 and the licensing of the invention or
15 to the technical development of a li-
16 censed copyrighted work between the
17 time of the filing of the application for
18 copyright registration and the licens-
19 ing of the copyrighted work.”; and

20 (iii) by adding at the end the follow-
21 ing new clause (iv):

22 “(iv) An agency that has published its intention to
23 promulgate regulations under clause (ii) with regard to
24 authors of copyrighted works may elect not to pay authors
25 under clause (i) until the earlier of the date two years

1 after the date of the enactment of the Federal Acquisition
2 Streamlining Act of 1993 or the date of the promulgation
3 of such regulations. If an agency makes such an election
4 and after two years the regulations have not been promul-
5 gated, the agency shall make payments (in accordance
6 with clause (i)) of at least 15 percent of the royalties in-
7 volved, retroactive to the date of the enactment of the Fed-
8 eral Acquisition Streamlining Act of 1993. If promulga-
9 tion of the regulations occurs within two years after the
10 date of the enactment of the Federal Acquisition Stream-
11 lining Act of 1993, payments shall be made in accordance
12 with such regulations, retroactive to such date. The agency
13 shall retain its royalties until the author's portion is paid
14 under either clause (i) or (ii). Such royalties may not be
15 transferred to the agency's Government-operated labora-
16 tories under subparagraph (B) and may not revert to the
17 Treasury pursuant to paragraph (2) as a result of any
18 delay caused by rule making under this subparagraph.”;

19 (C) in paragraph (1)(B)—

20 (i) in the matter above clause (i), by
21 striking out “going to the laboratory where
22 the invention occurred” and inserting in
23 lieu thereof “or copyrighted work going to
24 the laboratory where the invention oc-

1 curred or the copyrighted work was pre-
2 pared”; and

3 (ii) in clause (i)—

4 (I) by inserting “or copyrighted
5 works” after “licensing of inventions”;

6 (II) by inserting “, or copy-
7 righted works were prepared,” after
8 “inventions which occurred”; and

9 (III) by inserting “or copyrighted
10 work” before “management”;

11 (D) in paragraph (2), by inserting “and
12 authors” after “inventors”;

13 (E) in paragraph (3), by inserting “or au-
14 thor” after “inventor” both places it appears in
15 the second sentence; and

16 (F) in the first sentence of paragraph
17 (4)—

18 (i) by inserting “, or copyrighted work
19 management services,” after “management
20 services”;

21 (ii) by inserting “or authors” after
22 “inventors”;

23 (iii) by inserting “or copyrighting”
24 after “patenting”; and

1 (iv) by inserting “or copyright” after
2 “for any invention”;

3 ~~(2)~~ in subsection (b)—

4 (A) in the matter above paragraph (1), by
5 inserting “or copyrightable work” after “inven-
6 tion”; and

7 (B) in paragraph (2), by striking out “at
8 the time” and all that follows and inserting in
9 lieu thereof “at the time the invention was
10 made or copyrightable work was prepared,”;
11 and

12 ~~(3)~~ in subsection (c)—

13 (A) in paragraph (1)—

14 (i) by striking out “(1)”; and

15 (ii) by inserting “or author” after
16 “(including inventor”;

17 (B) by striking out paragraph (2).

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a)(1)(B)(i)(I) shall take effect with respect to
20 a department or agency of the Federal Government as of
21 the date of the enactment of this Act unless, within 90
22 days after that date, such department or agency publishes
23 in the Federal Register a notice of election to file a notice
24 of proposed rulemaking with regard to authors of copy-
25 righted works pursuant to section 14(a)(1)(A)(ii) of the

1 Stevenson-Wydler Technology Innovation Act of 1980 (15
2 U.S.C. 3710c(a)(1)(A)(ii)), as amended by subsection
3 (a)(1)(B)(ii).

4 **SEC. 5004. EXCEPTION TO PROHIBITION ON COPYRIGHT**
5 **PROTECTION FOR WORKS OF THE FEDERAL**
6 **GOVERNMENT.**

7 The text of section 105 of title 17, United States
8 Code, is amended to read as follows:

9 “(a) Except as provided in subsection (b), copyright
10 protection under this title is not available for any work
11 of the United States Government.

12 “(b)(1) Subsection (a) does not preclude the United
13 States from receiving and holding copyrights transferred
14 to it by assignment, bequest, or otherwise.

15 “(2) Subsection (a) does not preclude the United
16 States from copyright protection under this title that is
17 authorized in section 12(h) or 15(b) of the Stevenson-
18 Wydler Technology Innovation Act of 1980 (15 U.S.C.
19 3710a(h) or 3710d(b)).”.

1 **Subtitle B—Government Use of Pri-**
2 **vate Patents, Copyrights, and**
3 **Trade Secrets**

4 **SEC. 5011. GOVERNMENT USE OR MANUFACTURE OF A PAT-**
5 **ENTED INVENTION.**

6 (a) WITHHOLDING OF GOVERNMENT CONSENT FOR
7 CONTRACTOR USE OR MANUFACTURE.—The second un-
8 designated paragraph of section 1498(a) of title 28, Unit-
9 ed States Code, is amended by inserting after the first
10 sentence the following: “The Federal Acquisition Regu-
11 latory Council established under section 25(a) of the Of-
12 fice of Federal Procurement Policy Act (41 U.S.C. 421(a))
13 shall prescribe in the Federal Acquisition Regulation the
14 circumstances under which a contracting officer may with-
15 hold authorization or consent under this paragraph. The
16 Federal Acquisition Regulation shall provide that author-
17 ization or consent may not ordinarily be granted for con-
18 tracts for the acquisition of commercial items (as defined
19 in section 4(12) of such Act (41 U.S.C. 403(12))).”.

20 (b) INJUNCTION NOT AUTHORIZED REGARDING
21 GOVERNMENT CONTRACTOR USE OR MANUFACTURE.—
22 Section 283 of title 35, United States Code, is amended
23 by adding at the end the following: “Notwithstanding the
24 preceding sentence, no such court may grant an injunction
25 in the case of a violation of a right secured by patent that

1 occurs in the performance of a Federal Government con-
2 tract.”.

3 **SEC. 5012. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**
4 **TELLECTUAL PROPERTY RIGHTS.**

5 (a) AUTHORIZED ACQUISITIONS.—Section 2386 of
6 title 10, United States Code, is amended by striking out
7 paragraphs (3) and (4) and inserting in lieu thereof the
8 following:

9 “(3) Technical data and computer software.

10 “(4) Releases for past infringement of patents
11 or copyrights or for unauthorized use of technical
12 data or computer software.”.

13 (b) REDUNDANT PROVISION.—

14 (1) REPEAL.—Section 7210 of title 10, United
15 States Code, is repealed.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 631 of such title
18 is amended by striking out the item relating to sec-
19 tion 7210.

1 **TITLE VI—STANDARDS OF**
2 **CONDUCT**
3 **Subtitle A—Ethics Provisions**

4 **SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PRO-**
5 **CUREMENT POLICY ACT.**

6 (a) **RECUSAL.**—Subsection (c) of section 27 of the
7 Office of Procurement Policy Act (41 U.S.C. 423) is
8 amended—

9 (1) in paragraph (1)—

10 (A) in the matter above subparagraph (A),
11 by inserting “only” after “subsection (b)(1)”;
12 and

13 (B) in subparagraph (A), by inserting
14 “(including the modification or extension of a
15 contract)” after “any procurement”;

16 (2) by striking out paragraphs (2) and (3) and
17 inserting in lieu thereof:

18 “(2) Whenever the head of a procuring activity ap-
19 proves a recusal under paragraph (1), a copy of the
20 recusal request and the approval of the request shall be
21 retained by such official for a period (not less than five
22 years) specified in regulations prescribed in accordance
23 with subsection (e).

24 “(3)(A) Except as provided in subparagraph (B), all
25 recusal requests and approvals of recusal requests pursu-

1 ant to this subsection shall be made available to the public
2 on request.

3 ~~“(B) Any part of a recusal request or an approval~~
4 ~~of a recusal request that is exempt from the disclosure~~
5 ~~requirements of section 552 of title 5, United States Code,~~
6 ~~under subsection (b)(1) of such section may be withheld~~
7 ~~from disclosure to the public otherwise required under~~
8 ~~subparagraph (A).”;~~ and

9 (3) in paragraph (4), by striking out “compet-
10 ing contractor” and inserting in lieu thereof “per-
11 son”.

12 ~~(b) APPLICABILITY OF CERTIFICATION REQUIRE-~~
13 ~~MENT.—Subsection (e)(7)(A) of such section is amended~~
14 ~~by adding at the end the following: “However, paragraph~~
15 ~~(1)(B) does not apply with respect to a contract for less~~
16 ~~than \$500,000.”.~~

17 ~~(c) RESTRICTIONS RESULTING FROM PROCUREMENT~~
18 ~~ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection~~
19 ~~(f) of such section is amended—~~

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

22 (2) by striking out paragraphs (1) and (2) and
23 inserting in lieu thereof the following:

24 ~~“(1) No individual who, in the year prior to separa-~~
25 ~~tion from service as an officer or employee of the Govern-~~

1 ment or an officer of the uniformed services in a covered
2 position, participated personally and substantially in ac-
3 quisition functions related to a contract, subcontract, or
4 claim of \$500,000 or more and—

5 “(A) engaged in repeated direct contact with
6 the contractor or subcontractor on matters relating
7 to such contract, subcontract, or claim; or

8 “(B) exercised significant ongoing decisionmak-
9 ing responsibility with respect to the contractor or
10 subcontractor on matters relating to such contract,
11 subcontract, or claim,

12 shall knowingly accept or continue employment with such
13 contractor or subcontractor for a period of 1 year follow-
14 ing the individual’s separation from service, except that
15 such individual may accept or continue employment with
16 any division or affiliate of such contractor or subcontrac-
17 tor that does not produce the same or similar products
18 as the entity involved in the negotiation or performance
19 of the contract or subcontract or the adjustment of the
20 claim.

21 “(2) No contractor or subcontractor, or any officer,
22 employee, agent, or consultant of such contractor or sub-
23 contractor shall knowingly offer, provide, or continue any
24 employment for another person, if such contractor, sub-
25 contractor, officer, employee, agent, or consultant knows

1 or should know that the acceptance of such employment
2 is or would be in violation of paragraph (1).

3 ~~“(3) The head of each Federal agency shall designate~~
4 ~~in writing as a ‘covered position’ under this section each~~
5 ~~of the following positions in that agency:~~

6 ~~“(A) The position of source selection authority,~~
7 ~~member of a source selection evaluation board, or~~
8 ~~chief of a financial or technical evaluation team, or~~
9 ~~any other position, if the officer or employee in that~~
10 ~~position is likely personally to exercise substantial~~
11 ~~responsibility for ongoing discretionary functions in~~
12 ~~the evaluation of proposals or the selection of a~~
13 ~~source for a contract in excess of \$500,000.~~

14 ~~“(B) The position of procuring contracting offi-~~
15 ~~cer, or any other position, if the officer or employee~~
16 ~~in that position is likely personally to exercise sub-~~
17 ~~stantial responsibility for ongoing discretionary func-~~
18 ~~tions in the negotiation of a contract in excess of~~
19 ~~\$500,000 or the negotiation or settlement of a claim~~
20 ~~in excess of \$500,000.~~

21 ~~“(C) The position of program executive officer,~~
22 ~~program manager, or deputy program manager, or~~
23 ~~any other position, if the officer or employee in that~~
24 ~~position is likely personally to exercise similar sub-~~
25 ~~stantial responsibility for ongoing discretionary func-~~

1 tions in the management or administration of a con-
2 tract in excess of \$500,000.

3 ~~“(D) The position of administrative contracting~~
4 ~~officer, the position of an officer or employee as-~~
5 ~~signed on a permanent basis to a Government Plant~~
6 ~~Representative’s Office, the position of auditor, a~~
7 ~~quality assurance position, or any other position, if~~
8 ~~the officer or employee in that position is likely per-~~
9 ~~sonally to exercise substantial responsibility for on-~~
10 ~~going discretionary functions in the on-site oversight~~
11 ~~of a contractor’s operations with respect to a con-~~
12 ~~tract in excess of \$500,000.~~

13 ~~“(E) A position in which the incumbent is likely~~
14 ~~personally to exercise substantial responsibility for~~
15 ~~ongoing discretionary functions in operational or de-~~
16 ~~velopmental testing activities involving repeated di-~~
17 ~~rect contact with a contractor regarding a contract~~
18 ~~in excess of \$500,000.”.~~

19 ~~(d) DISCLOSURE OF PROPRIETARY OR SOURCE SE-~~
20 ~~LECTION INFORMATION TO UNAUTHORIZED PERSONS.—~~
21 ~~Subsection (1) of such section is amended—~~

22 ~~(1) by inserting “who are likely to be involved~~
23 ~~in contracts, modifications, or extensions in excess of~~
24 ~~\$25,000” in the first sentence after “its procure-~~
25 ~~ment officials”;~~ and

1 (2) by striking out “(e)” each place it appears
2 and inserting in each such place “(f)”.

3 (e) RULES OF CONSTRUCTION.—Subsection (n) of
4 such section is amended to read as follows:

5 “(n) RULES OF CONSTRUCTION.—Nothing in this
6 section shall be construed to—

7 “(1) authorize the withholding of any informa-
8 tion from the Congress, any committee or sub-
9 committee thereof, a Federal agency, any board of
10 contract appeals of a Federal agency, the Comptrol-
11 ler General, or an inspector general of a Federal
12 agency;

13 “(2) restrict the disclosure of information to, or
14 receipt of information by, any person or class of per-
15 sons authorized, in accordance with applicable agen-
16 cy regulations or procedures, to receive that infor-
17 mation;

18 “(3) restrict a contractor from disclosing its
19 own proprietary information or the recipient of in-
20 formation so disclosed by a contractor from receiving
21 such information; or

22 “(4) restrict the disclosure or receipt of infor-
23 mation relating to a Federal agency procurement
24 that has been canceled by the agency and that the

1 contracting officer concerned determines in writing
2 is not likely to be resumed.”.

3 ~~(f) TERM TO BE DEFINED IN REGULATIONS.~~—Sub-
4 section ~~(o)(2)(A)~~ of such section is amended—

5 (1) by inserting “money, gratuity, or other” be-
6 fore “thing of value.”; and

7 (2) by inserting before the semicolon “and such
8 other exceptions as may be adopted on a Govern-
9 mentwide basis under section 7353 of title 5, United
10 States Code”.

11 ~~(g) TERMS DEFINED IN LAW.~~—Subsection ~~(p)~~ of
12 such section is amended—

13 (1) in paragraph (1) by striking out “clauses
14 ~~(i)–(viii)~~” and inserting in lieu thereof “clauses (i)
15 through (vii)”;

16 (2) in paragraph (3)—

17 (A) in subparagraph (A)—

18 (i) by striking out clause (i);

19 (ii) by redesignating clauses ~~(ii)~~, ~~(iii)~~,
20 ~~(iv)~~, ~~(v)~~, ~~(vi)~~, ~~(vii)~~, and ~~(viii)~~ as clauses (i),
21 (ii), (iii), (iv), (v), (vi), and (vii), respec-
22 tively; and

23 (iii) in clause (i) (as redesignated by
24 subclause (II) of this clause), by striking
25 out “review and approval of a specifica-

1 tion” and inserting in lieu thereof “ap-
2 proval or issuance of a specification, acqui-
3 sition plan, procurement request, or req-
4 uisition”; and

5 (B) in subparagraph (B), by striking out
6 all after “includes” and inserting in lieu thereof
7 the following: “any individual acting on behalf
8 of, or providing advice to, the agency with re-
9 spect to any phase of the agency procurement
10 concerned, regardless of whether such individ-
11 ual is a consultant, expert, or advisor, or an of-
12 ficer or employee of a contractor or subcontrac-
13 tor (other than a competing contractor).”; and

14 (3) in paragraph (6)(A), by inserting
15 “nonpublic” before “information”.

16 **SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES**
17 **CODE.**

18 Section 208(a) of title 18, United States Code, is
19 amended—

20 (1) by inserting “(1)” before “Except as per-
21 mitted”; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(2) Whoever knowingly aids, abets, counsels, com-
25 mands, induces, or procures conduct prohibited by this

1 section shall be subject to the penalties set forth in section
2 216 of this title.”.

3 **SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

4 (a) REPEAL.—The following provisions of law are re-
5 pealed:

6 (1) Sections 2207, 2397, 2397a, 2397b, 2397c,
7 and 2408 of title 10, United States Code.

8 (2) Section 281 of title 18, United States Code.

9 (3) Section 801 of title 37, United States Code.

10 (4) Part A of title VI of the Department of En-
11 ergy Organization Act (42 U.S.C. 7211 through
12 7218).

13 (b) CLERICAL AMENDMENTS.—

14 (1) TITLE 10.—Part IV of subtitle A of title 10,
15 United States Code, is amended—

16 (A) in the table of sections at the begin-
17 ning of chapter 131, by striking out the item
18 relating to section 2207; and

19 (B) in the table of sections for chapter
20 141, by striking out the items relating to sec-
21 tions 2397, 2397a, 2397b, 2397c, and 2408.

22 (2) TITLE 18.—The table of sections for chap-
23 ter 15 of title 18, United States Code, is amended
24 by striking out the item relating to section 281.

1 (3) ~~TITLE 37.~~—The table of sections for chap-
2 ter 15 of title 37, United States Code, is amended
3 by striking out the item relating to section 801.

4 (4) ~~DEPARTMENT OF ENERGY ORGANIZATION~~
5 ~~ACT.~~—The table of contents for the Department of
6 Energy Organization Act is amended by striking out
7 the matter relating to part A of title VI.

8 **SEC. 6004. IMPLEMENTATION.**

9 (a) ~~REGULATIONS.~~—Not later than 180 days after
10 the date of the enactment of this Act, regulations imple-
11 menting the amendments made by this section to section
12 27 of the Office of Federal Procurement Policy Act (41
13 U.S.C. 423), including definitions of the terms used in
14 subsection (f) of such section shall be issued in accordance
15 with sections 6 and 25 of such Act (41 U.S.C. 405 and
16 521) after coordination with the Director of the Office of
17 Government Ethics.

18 (b) ~~SAVINGS PROVISIONS.~~—

19 (1) ~~CONTRACTOR CERTIFICATIONS.~~—No officer,
20 employee, agent, representative, or consultant of a
21 contractor who has signed a certification under sec-
22 tion 27(e)(1)(B) of the Office of Federal Procure-
23 ment Policy Act (41 U.S.C. 423(e)(1)(B)) before the
24 effective date of this Act shall be required to sign a

1 new certification as a result of the enactment of this
2 Act.

3 ~~(2) FEDERAL PROCUREMENT OFFICIAL CER-~~
4 ~~TIFICATIONS.—~~No procurement official of a Federal
5 agency who has signed a certification under section
6 27(l) of the Office of Federal Procurement Policy
7 Act (41 U.S.C. 423(l)) before the date of enactment
8 of this Act shall be required to sign a new certifi-
9 cation as a result of the enactment of this Act.

10 ~~(c) INSPECTOR GENERAL REPORTS.—~~Not later than
11 May 31 of each of the years 1994 through 1998, the In-
12 spector General of each Federal agency (or, in the case
13 of a Federal agency that does not have an Inspector Gen-
14 eral, the head of such agency) shall submit to Congress
15 a report on the compliance by the agency during the pre-
16 ceding year with the requirement for the head of the agen-
17 cy to designate covered procurement positions under sec-
18 tion 27(f)(3) of the Office of Federal Procurement Policy
19 Act (as added by section 6001(c)).

20 **Subtitle B—Additional** 21 **Amendments**

22 **SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FED-** 23 **ERAL PERSONNEL.**

24 ~~(a) AMENDMENT OF OFPP ACT.—~~The Office of Fed-
25 eral Procurement Policy Act, as amended by section 1091,

1 is further amended by inserting after section 22 the fol-
2 lowing new section 23:

3 “CONTRACTING FUNCTIONS PERFORMED BY FEDERAL
4 PERSONNEL

5 “SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVI-
6 SORY AND ASSISTANCE SERVICES.—(1) No person who is
7 not an employee may be paid by an agency for services
8 to conduct evaluations or analyses of any aspect of a pro-
9 posal submitted for an acquisition unless employees with
10 adequate training and capabilities to perform such evalua-
11 tions and analyses are not readily available within the
12 agency or any other Federal agency.

13 “(2) In the administration of this subsection, the
14 head of each agency shall determine the standards of ade-
15 quate training and capability of employees to conduct such
16 acquisitions.

17 “(b) DELEGATION OF PROCUREMENT AUTHORITY.—
18 With respect to an acquisition that is subject to section
19 111 of the Federal Property and Administrative Services
20 Act of 1949 (40 U.S.C. 759), the Administrator of Gen-
21 eral Services may not issue a delegation of procurement
22 authority for the acquisition unless the request for the del-
23 egation of procurement authority includes a determination
24 of the contracting agency that—

25 “(1) such agency has and will utilize employees
26 within the agency, or employees available from an-

1 other agency, who are adequately trained and capa-
2 ble of conducting evaluations and analyses of pro-
3 posals submitted for such an acquisition; or

4 “(2)(A) such agency does not have employees
5 within the agency who are adequately trained and
6 capable of conducting evaluations and analyses of
7 proposals submitted for such an acquisition; and

8 “(B) adequately trained and capable employees
9 are not readily available from other agencies in ac-
10 cordance with regulations promulgated by the Fed-
11 eral Acquisition Regulatory Council.

12 “(c) DEFINITION.—For purposes of this section, the
13 term ‘employee’ has the meaning given such term in sec-
14 tion 2105 of title 5, United States Code.”.

15 (b) REQUIREMENT FOR GUIDANCE AND REGULA-
16 TIONS.—

17 (1) GUIDANCE AND REGULATIONS REQUIRED.—

18 Not later than 90 days after the date of the enact-
19 ment of this Act, the Federal Acquisition Regulatory
20 Council established by section 25(a) of the Office of
21 Federal Procurement Policy Act (41 U.S.C. 421(a))
22 shall—

23 (A) review part 37 of title 48 of the Code
24 of Federal Regulations as it relates to the use
25 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 ex-
5 pertise is readily available within the Fed-
6 eral Government before contracting for ad-
7 visory and technical services to conduct ac-
8 quisitions; and

9 (ii) the manner in which Federal em-
10 ployees with expertise may be shared with
11 agencies needing expertise for such acqui-
12 sitions.

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. 6052. REPEAL OF EXECUTED REQUIREMENT FOR**
17 **STUDY AND REPORT.**

18 Section 17 of the Office of Federal Procurement Pol-
19 icy Act (41 U.S.C. 415) is repealed.

20 **SEC. 6053. WAITING PERIOD FOR SIGNIFICANT CHANGES**
21 **PROPOSED FOR ACQUISITION REGULATIONS.**

22 Section 22(a) of the Office of Federal Procurement
23 Policy Act (41 U.S.C. 418b) is amended—

24 (1) by striking out “30 days” and inserting in
25 lieu thereof “60 days”; and

1 (2) by adding at the end the following: “Not-
2 withstanding the preceding sentence, such a policy,
3 regulation, procedure, or form may take effect ear-
4 lier than 60 days after the publication date when
5 there are compelling circumstances for the earlier
6 effective date, but in no event may that effective
7 date be less than 30 days after the publication
8 date.”.

9 **TITLE VII—DEFENSE TRADE AND** 10 **COOPERATION**

11 **SEC. 7001. PURCHASES OF FOREIGN GOODS.**

12 (a) ~~REPEAL OF EXECUTED REQUIREMENTS.—~~

13 (1) ~~BUY AMERICAN PROVISIONS.—~~

14 (A) ~~REQUIREMENT FOR POLICY GUID-~~
15 ~~ANCE.—Title III of the Act of March 3, 1933~~
16 ~~(41 U.S.C. 10a et seq.), commonly referred to~~
17 ~~as the “Buy American Act”, is amended in sec-~~
18 ~~tion 4(g) (41 U.S.C. 10b–1(g)) by striking out~~
19 ~~paragraphs (2)(C) and (3).~~

20 (B) ~~REPORTING REQUIREMENT.—Section~~
21 ~~9096(b) of Public Law 102–396 (106 Stat.~~
22 ~~1924; 41 U.S.C. 10b–2(b)) is repealed.~~

23 (2) ~~STUDIES OF BUY AMERICAN ACT WAIV-~~
24 ~~ERS.—Section 306 of the Trade Agreements Act of~~
25 ~~1970 (19 U.S.C. 2516), relating to studies of certain~~

1 employment effects and procurement effects of a
2 waiver of title III of the Act of March 3, 1933 (41
3 U.S.C. 10a et seq.), commonly referred to as the
4 “Buy American Act”, is repealed.

5 (b) REPEAL OF REDUNDANT PROVISION.—Section
6 2327 of title 10, United States Code, is repealed.

7 **SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.**

8 (a) DEFENSE INTERNATIONAL AGREEMENTS.—

9 (1) TERMINOLOGY REVISIONS.—Section 2531
10 of title 10, United States Code, is amended—

11 (A) in the subsection captions for sub-
12 sections (a) and (c), by striking out “MOUs
13 AND RELATED” and inserting in lieu thereof
14 “INTERNATIONAL”;

15 (B) in subsection (a), by striking out “pro-
16 posed memorandum of understanding, or any
17 existing or proposed agreement related to a
18 memorandum of understanding,” in the matter
19 above paragraph (1) and inserting in lieu there-
20 of “proposed international agreement, including
21 a memorandum of understanding.”;

22 (C) by striking out “memorandum of un-
23 derstanding or related agreement” each place it
24 appears and inserting in lieu thereof “inter-
25 national agreement”;

1 (D) in subsection (b), by striking out
2 “memorandum or related agreement” each
3 place it appears in the second sentence and in-
4 serting in lieu thereof “international agree-
5 ment”; and

6 (E) in subsection (c)—

7 (i) by striking out “A” after “AGREE-
8 MENTS.—” and inserting in lieu thereof
9 “An”; and

10 (ii) by striking out “memorandum or
11 agreement” and inserting in lieu thereof
12 “international agreement”.

13 (2) EXPANDED SCOPE OF AGREEMENTS.—Sec-
14 tion 2531(a) of title 10, United States Code, is
15 amended by striking out “research, development, or
16 production” in the matter above paragraph (1) and
17 inserting in lieu thereof “research, development, pro-
18 duction, or logistics support”.

19 (3) CLERICAL AMENDMENTS.—

20 (A) SECTION HEADING.—The heading of
21 section 2531 of title 10, United States Code, is
22 amended to read as follows:

23 “§ 2531. **Defense international agreements**”.

24 (B) TABLE OF SECTIONS.—The item relat-
25 ing to such section in the table of sections at

1 the beginning of subchapter V of chapter 148
2 of such title is amended to read as follows:

“2531. Defense international agreements.”.

3 (b) REPEAL OF UNNECESSARY AUTHORITY.—

4 (1) REPEAL.—Section 7344 of title 10, United
5 States Code, is repealed.

6 (2) CLERICAL AMENDMENT.—The table of sec-
7 tions at the beginning of chapter 635 of such title
8 is amended by striking out the item relating to sec-
9 tion 7344.

10 **SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS,**
11 **AND STANDARDIZATION.**

12 (a) LIMITED WAIVER OF RESTRICTIONS ON AC-
13 CRUED REIMBURSABLE LIABILITIES AND CREDITS FOR
14 CONTINGENCY OPERATIONS.—Section 2347 of title 10,
15 United States Code, is amended by adding at the end the
16 following new subsection:

17 “(c) The Secretary of Defense may waive the restric-
18 tions in subsections (a) and (b) for a period not to exceed
19 180 days upon a written determination that the armed
20 forces are involved in a contingency operation or that in-
21 volvement of the armed forces in a contingency operation
22 is imminent. Upon making such a determination, the Sec-
23 retary shall transmit a copy of the determination to the
24 Committees on Armed Services of the Senate and House
25 of Representatives.”.

1 (b) COMMUNICATIONS SUPPORT.—Section 2350f of
2 title 10, United States Code, is amended—

3 (1) by redesignating subsection (d) as sub-
4 section (e); and

5 (2) by inserting after subsection (c) the follow-
6 ing new subsection:

7 “(d)(1) Nothing in this section shall be construed to
8 limit the authority of the Secretary of Defense, without
9 a formal bilateral agreement or multilateral arrangement,
10 to furnish communications support and related supplies
11 to, or receive communications support and related supplies
12 from, an allied country in accordance with this subsection.

13 “(2) The Secretary of Defense may furnish or receive
14 such support and supplies on a reciprocal basis for a pe-
15 riod not to exceed 90 days—

16 “(A) in order to meet emerging operational re-
17 quirements of the United States and the allied coun-
18 try; or

19 “(B) incident to a joint military exercise with
20 the allied country.

21 “(3) If interconnection of communication circuits is
22 maintained for joint or multilateral defense purposes
23 under the authority of this subsection, the costs of main-
24 taining such circuits may be allocated among the various
25 users.”.

1 **TITLE VIII—COMMERCIAL ITEMS**

2 **SEC. 8001. DEFINITIONS.**

3 Section 4 of the Office of Federal Procurement Policy
4 Act (41 U.S.C. 403), as amended by section 4001(a), is
5 further amended—

6 (1) by striking out “Act—” and inserting in lieu
7 thereof “Act.”;

8 (2) by capitalizing the initial letter in the first
9 word of each paragraph;

10 (3) by striking out the semicolon at the end of
11 each of paragraphs (1), (2), (3), (5), (6), (7), (8),
12 and (9) and inserting in lieu thereof a period;

13 (4) in paragraphs (4) and (10), by striking out
14 “; and” at the end and inserting in lieu thereof a
15 period; and

16 (5) by adding at the end the following new
17 paragraphs:

18 “(12) The term ‘commercial item’ means—

19 “(A) property, other than real property,
20 that is of a type regularly used by the general
21 public or by nongovernmental entities in the
22 course of normal business operations for pur-
23 poses other than governmental purposes and—

24 “(i) has been sold or licensed to the
25 general public;

1 ~~“(ii) has not been sold or licensed to~~
2 ~~the general public but has been offered for~~
3 ~~sale or license to the general public; or~~

4 ~~“(iii) is not yet available in the com-~~
5 ~~mercial marketplace but will be made~~
6 ~~available for commercial delivery within a~~
7 ~~reasonable period;~~

8 ~~“(B) any item that, but for minor modi-~~
9 ~~fications made to meet Federal Government re-~~
10 ~~quirements or modifications of a type customar-~~
11 ~~ily available in the commercial marketplace,~~
12 ~~would satisfy the criteria in subparagraph (A);~~

13 ~~“(C) any combination of items meeting the~~
14 ~~requirements of subparagraph (A) or (B) that~~
15 ~~are of a type customarily combined and sold in~~
16 ~~combination to the general public; and~~

17 ~~“(D) installation services, maintenance~~
18 ~~services, repair services, training services, and~~
19 ~~other services if such services are procured for~~
20 ~~support of an item referred to in subparagraph~~
21 ~~(A), (B), or (C) and if the source of such serv-~~
22 ~~ices—~~

23 ~~“(i) offers such services to the general~~
24 ~~public and the Federal Government con-~~

1 temporarily and under similar terms
2 and conditions; and

3 “(ii) offers to use the same work force
4 for providing the Federal Government with
5 such services as the source uses for provid-
6 ing such services to the general public.

7 “(13) The term ‘nondevelopmental item’
8 means—

9 “(A) any commercial item;

10 “(B) any previously developed item of sup-
11 ply that is in use by a department or agency of
12 the United States, a State or local government,
13 or a foreign government with which the United
14 States has a mutual defense cooperation agree-
15 ment;

16 “(C) any item of supply described in sub-
17 paragraph (A) or (B) that requires only minor
18 modification of the type normally available in
19 the commercial marketplace in order to meet
20 the requirements of the procuring department
21 or agency; or

22 “(D) any item of supply currently being
23 produced that does not meet the requirements
24 of subparagraph (A), (B), or (C) solely because
25 the item—

1 “(i) is not yet in use; or

2 “(ii) is not yet available in the com-
3 mercial marketplace.

4 “(14) The term ‘component’ means any item
5 supplied to the Federal Government as part of an
6 end item or of another component.

7 “(15) The term ‘commercial component’ means
8 any component that is a commercial item.”.

9 **SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMER-**
10 **CIAL ITEMS AND NONDEVELOPMENTAL**
11 **ITEMS.**

12 (a) PREFERENCE REQUIRED.—The Office of Federal
13 Procurement Policy Act (41 U.S.C. 401 et seq.), as
14 amended by section 4021, is further amended by adding
15 at the end the following new section:

16 “PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS
17 AND NONDEVELOPMENTAL ITEMS

18 “SEC. 31. (a) PREFERENCE.—The head of each exec-
19 utive agency shall ensure that, to the maximum extent
20 practicable—

21 “(1) requirements of the executive agency with
22 respect to a procurement of supplies are stated in
23 terms of—

24 “(A) functions to be performed;

25 “(B) performance required; or

26 “(C) essential physical characteristics;

1 “(2) such requirements are defined so that
2 commercial items or other nondevelopmental items
3 may be procured to fulfill such requirements; and

4 “(3) such requirements are fulfilled through the
5 procurement of commercial items or other
6 nondevelopmental items.

7 “(b) IMPLEMENTATION.—The head of each executive
8 agency shall ensure that procurement officials in that ex-
9 ecutive agency, to the maximum extent practicable—

10 “(1) acquire commercial items or other
11 nondevelopmental items to meet the needs of the ex-
12 ecutive agency;

13 “(2) require prime contractors and subcontractors at all levels under the executive agency contracts to incorporate commercial items or other nondevelopmental items as components of items supplied to the executive agency;

14 “(3) modify requirements in appropriate cases
15 to ensure that the requirements can be met by com-
16 mercial items or other nondevelopmental items;

17 “(4) state specifications in terms that enable
18 and encourage bidders and offerors to supply com-
19 mercial items or other nondevelopmental items in re-
20 sponse to the executive agency solicitations;

1 ~~“(5) revise the executive agency’s procurement~~
2 ~~policies, practices, and procedures not required by~~
3 ~~law to reduce any impediments in those policies,~~
4 ~~practices, and procedures to the acquisition of com-~~
5 ~~mmercial items and other nondevelopmental items;~~
6 ~~and~~

7 ~~“(6) require training of appropriate personnel~~
8 ~~in the acquisition of commercial items and other~~
9 ~~nondevelopmental items.~~

10 ~~“(c) PRELIMINARY MARKET RESEARCH.—(1) The~~
11 ~~head of an executive agency shall conduct market research~~
12 ~~appropriate to the circumstances—~~

13 ~~“(A) before developing new specifications for a~~
14 ~~procurement by that executive agency; and~~

15 ~~“(B) before soliciting bids or proposals for a~~
16 ~~contract in excess of the simplified acquisition~~
17 ~~threshold.~~

18 ~~“(2) The head of an executive agency shall use the~~
19 ~~results of market research to determine whether there are~~
20 ~~commercial items or other nondevelopmental items avail-~~
21 ~~able that—~~

22 ~~“(A) meet the executive agency’s requirements;~~

23 ~~“(B) could be modified to meet the executive~~
24 ~~agency’s requirements; or~~

1 “(C) could meet the executive agency’s require-
2 ments if those requirements were modified to a rea-
3 sonable extent.”.

4 (b) REPEAL OF SUPERSEDED PROVISION.—

5 (1) SEPARATE STATEMENT OF PREFERENCE
6 FOR DEPARTMENT OF DEFENSE.—Section 2325 of
7 title 10, United States Code, is repealed.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 137 of such title
10 is amended by striking out the item relating to sec-
11 tion 2325.

12 **SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.**

13 (a) REQUIRED FAR PROVISIONS.—The Office of
14 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),
15 as amended by section 8002, is further amended by adding
16 at the end the following:

17 “FEDERAL ACQUISITION REGULATION PROVISIONS RE-
18 GARDING ACQUISITIONS OF COMMERCIAL ITEMS AND
19 COMPONENTS

20 “SEC. 32. (a) CONTRACT CLAUSES AND OTHER
21 CLAUSES.—(1)(A) The Federal Acquisition Regulation
22 shall include one or more sets of contract clauses contain-
23 ing the terms and conditions for the acquisition of com-
24 mercial items and commercial components by executive
25 agencies and by contractors in the performance of con-
26 tracts of executive agencies.

1 ~~“(B) The contract clauses referred to in subpara-~~
2 ~~graph (A) shall include only—~~

3 ~~“(i) those clauses that are required to imple-~~
4 ~~ment provisions of law applicable to acquisitions of~~
5 ~~commercial items or commercial components, as the~~
6 ~~case may be;~~

7 ~~“(ii) those contract clauses that are essential~~
8 ~~for the protection of the Federal Government’s inter-~~
9 ~~est in an acquisition of commercial items or commer-~~
10 ~~cial components, as the case may be; and~~

11 ~~“(iii) those contract clauses that are determined~~
12 ~~to be consistent with standard commercial practice~~
13 ~~and appropriate to be included in a contract or sub-~~
14 ~~contract for commercial items or commercial compo-~~
15 ~~nents, as the case may be.~~

16 ~~“(2) Subject to paragraph (3), the Federal Acquisi-~~
17 ~~tion Regulation shall require that, to the maximum extent~~
18 ~~practicable, only the contract clauses referred to in para-~~
19 ~~graph (1) be used in a contract or subcontract for the~~
20 ~~acquisition of commercial items or commercial components~~
21 ~~by or for an executive agency.~~

22 ~~“(3) The Federal Acquisition Regulation shall pro-~~
23 ~~vide that a contract or subcontract referred to in para-~~
24 ~~graph (2) may contain contract clauses other than the~~
25 ~~contract clauses referred to in that paragraph only if the~~

1 other clauses are essential for the protection of the Fed-
2 eral Government's interest in—

3 ~~“(A) that contract or subcontract, as deter-~~
4 ~~mined in writing by the contracting officer for such~~
5 ~~contract; or~~

6 ~~“(B) a class of contracts or subcontracts, as de-~~
7 ~~termined by the head of an agency concerned, unless~~
8 ~~the determination of that head of an agency is dis-~~
9 ~~approved by the Administrator.~~

10 ~~“(4) The Federal Acquisition Regulation shall pro-~~
11 ~~vide standards and procedures for waiving the use of con-~~
12 ~~tract clauses required pursuant to paragraph (1); other~~
13 ~~than those required by law, including standards for deter-~~
14 ~~mining the cases in which a waiver is appropriate.~~

15 ~~“(b) MARKET ACCEPTANCE.—The Federal Acquisi-~~
16 ~~tion Regulation shall include a requirement for the head~~
17 ~~of an executive agency, when determined appropriate in~~
18 ~~accordance with criteria set out in the regulation, to re-~~
19 ~~quire offerors for a contract to demonstrate in the offer~~
20 ~~that the items offered—~~

21 ~~“(1) have either—~~

22 ~~“(A) achieved a level of commercial market~~
23 ~~acceptance necessary to indicate that the items~~
24 ~~are suitable for the executive agency's use; or~~

1 “(B) been satisfactorily supplied to an ex-
2 ecutive agency under current or recent con-
3 tracts for the same or similar requirements; and
4 “(2) otherwise meet the item description, speci-
5 fications, or other criteria prescribed in the public
6 notice and solicitation relating to the contract.

7 “(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The
8 Federal Acquisition Regulation shall include a require-
9 ment that firm, fixed price contracts be used, to the maxi-
10 mum extent practicable, for the acquisition of commercial
11 items.

12 “(d) CONTRACT QUALITY REQUIREMENTS.—The
13 Federal Acquisition Regulation shall include provisions
14 that—

15 “(1) permit, to the maximum extent prac-
16 ticable, a contractor under a commercial items ac-
17 quisition to use the contractor’s existing quality as-
18 surance system as a substitute for compliance with
19 a requirement for the Federal Government to inspect
20 or test the commercial items before the contractor’s
21 tender of those items for acceptance by the Federal
22 Government;

23 “(2) require that, to the maximum extent prac-
24 ticable, an executive agency take advantage of war-
25 ranties (including extended warranties) offered by

1 offerors of commercial items and use such warran-
2 ties for the repair and replacement of commercial
3 items; and

4 “~~(3)~~ set forth guidance to executive agencies re-
5 garding the use of past performance of items and
6 sources as a factor in contract award decisions.”.

7 ~~(b) DEFENSE CONTRACT CLAUSES.—~~

8 ~~(1) REPEAL OF DOD AUTHORITY.—~~Section
9 ~~824(b)~~ of the National Defense Authorization Act
10 for Fiscal Years 1990 and 1991 (Public Law 101-
11 189; 10 U.S.C. 2325 note) is repealed.

12 ~~(2) SAVINGS PROVISION.—~~Notwithstanding sec-
13 tion ~~32(a)~~ of the Office of Federal Procurement Pol-
14 icy Act (as added by subsection (a)), contracts of the
15 Department of Defense entered into before October
16 1, 1994, and subcontracts entered into before such
17 date under such contracts, may include clauses de-
18 veloped pursuant to paragraphs ~~(2)~~ and ~~(3)~~ of sec-
19 tion ~~824(b)~~ of the National Defense Authorization
20 Act for Fiscal Years 1990 and 1991 (Public Law
21 101-189; 10 U.S.C. 2325 note).

1 **SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN**
2 **LAWS.**

3 The Office of Federal Procurement Policy Act (41
4 U.S.C. 401 et seq.), as amended by section 8003, is fur-
5 ther amended by adding at the end the following:

6 “CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO
7 ACQUISITIONS OF COMMERCIAL ITEMS

8 “SEC. 33. (a) IN GENERAL.—(1) The applicability of
9 a provision of law described in paragraph (2) to contracts
10 for the acquisition of commercial items may be waived on
11 a class basis in the Federal Acquisition Regulation. Such
12 a waiver shall not apply to a provision of law that ex-
13 pressly refers to this section and prohibits the waiver of
14 that provision of law.

15 “(2) A provision of law referred to in paragraph (1)
16 is any provision of law enacted after the date of the enact-
17 ment of the Federal Acquisition Streamlining Act of 1993
18 that, as determined by the Administrator for Federal Pro-
19 curement Policy, sets forth policies, procedures, require-
20 ments, or restrictions for the procurement of property or
21 services by the Federal Government.

22 “(b) WAIVER OF APPLICABILITY TO SUB-
23 CONTRACTS.—The applicability of a provision of law de-
24 scribed in subsection (a)(2) to subcontracts under a con-
25 tract for the acquisition of commercial items may be
26 waived on a class basis in the Federal Acquisition Regula-

1 tion. Such a waiver shall not apply to a provision of law
2 that expressly refers to this section and prohibits the waiv-
3 er of that provision of law.”.

4 **SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
5 **LAW.**

6 (a) ARMED SERVICES ACQUISITIONS.—

7 (1) PROHIBITION ON CONTINGENT FEES.—Sec-
8 tion 2306(b) of title 10, United States Code, as
9 amended by section 4031, is further amended by in-
10 sserting before the period at the end of the sentence
11 added by section 4031 the following: “or to a con-
12 tract for the acquisition of commercial items”.

13 (2) REQUIREMENT TO IDENTIFY SUPPLIERS
14 AND SOURCES OF SUPPLIES.—Paragraph (2) of sec-
15 tion 2384(b) of title 10, United States Code, is
16 amended to read as follows:

17 “(2) The regulations prescribed pursuant to para-
18 graph (1) do not apply to a contract that requires the de-
19 livery of supplies that are commercial items, as defined
20 in section 2302 of this title.”.

21 (3) PROHIBITION AGAINST DOING BUSINESS
22 WITH CERTAIN OFFERORS OR CONTRACTORS.—Sec-
23 tion 2393(d) of title 10, United States Code, as
24 amended by section 4034, is further amended by
25 adding at the end the following: “The requirement

1 shall not apply in the case of a subcontract for the
2 acquisition of commercial items (as defined in sec-
3 tion 4(12) of the Office of Federal Procurement Pol-
4 icy Act (41 U.S.C. 403(12))).”.

5 (4) PROHIBITION ON LIMITATION OF SUB-
6 CONTRACTOR DIRECT SALES.—Section 2402 of title
7 10, United States Code, as amended by section
8 4032, is further amended by adding at the end the
9 following new subsection:

10 “(d)(1) An agreement between the contractor in a
11 contract for the acquisition of commercial items and a
12 subcontractor under such contract that restricts sales by
13 such subcontractor directly to persons other than the con-
14 tractor may not be considered to unreasonably restrict
15 sales by that subcontractor to the United States in viola-
16 tion of the provision included in such contract pursuant
17 to subsection (a) if the agreement does not result in the
18 Federal Government being treated differently with regard
19 to the restriction than any other prospective purchaser of
20 such commercial items from that subcontractor.

21 “(2) In paragraph (1), the term ‘commercial item’
22 has the meaning given such term in section 4(12) of the
23 Office of Federal Procurement Policy Act (41 U.S.C.
24 403(12)).”.

1 (5) PREFERENCE FOR USE OF UNITED STATES
2 VESSELS FOR TRANSPORTING SUPPLIES OF THE
3 ARMED FORCES.—Section 2631 of title 10, United
4 States Code, as amended by section 4036, is further
5 amended by inserting before the period at the end
6 of the sentence added by section 4036 the following:
7 “or to a contract for the transportation of commer-
8 cial items (as defined in section 4(12) of such Act
9 (41 U.S.C. 403(12))).”.

10 (b) CIVILIAN AGENCY ACQUISITIONS.—

11 (1) RESTRICTIONS ON SUBCONTRACTOR SALES
12 TO THE UNITED STATES.—Section 303G of the Fed-
13 eral Property and Administrative Services Act of
14 1949 (41 U.S.C. 253g), as amended by section
15 4042, is further amended by adding at the end the
16 following new subsection:

17 “(d) An agreement between the contractor in a con-
18 tract for the acquisition of commercial items and a sub-
19 contractor under such contract that restricts sales by such
20 subcontractor directly to persons other than the contractor
21 may not be considered to unreasonably restrict sales by
22 that subcontractor to the United States in violation of the
23 provision included in such contract pursuant to subsection
24 (a) if the agreement does not result in the Federal Govern-
25 ment being treated differently with regard to the restric-

1 tion than any other prospective purchaser of such commer-
2 cial items from that subcontractor.”.

3 (2) PROHIBITION ON CONTINGENT FEES.—Sec-
4 tion 304(a) of the Federal Property and Administra-
5 tive Services Act of 1949 (41 U.S.C. 254(a)), as
6 amended by section 4041, is further amended by in-
7 serting before the period at the end of the sentence
8 added by section 4041 the following: “or to a con-
9 tract for the acquisition of commercial items”.

10 (c) ACQUISITIONS GENERALLY.—

11 (1) FEDERAL WATER POLLUTION CONTROL
12 ACT.—Section 508 of the Federal Water Pollution
13 Control Act (33 U.S.C. 1368) is amended by adding
14 at the end the following new subsection:

15 “(f)(1) No certification by a contractor, and no con-
16 tract clause, may be required in the case of a contract
17 for the acquisition of commercial items in order to imple-
18 ment a prohibition or requirement of this section or a pro-
19 hibition or requirement issued in the implementation of
20 this section.

21 “(2) In paragraph (1), the term ‘commercial item’
22 has the meaning given such term in section 4(12) of the
23 Office of Federal Procurement Policy Act (41 U.S.C.
24 403(12)).”.

1 (2) ~~CONTRACT WORK HOURS AND SAFETY~~
2 ~~STANDARDS ACT.~~—The Contract Work Hours and
3 ~~Safety Standards Act~~ (title I of the Work Hours and
4 ~~Safety Act of 1962~~ (40 U.S.C. 327 et seq.)) is
5 amended by adding at the end the following new sec-
6 tion:

7 “~~SEC. 108.~~ (a) No certification by a contractor, and
8 no contract clause, may be required in the case of a con-
9 tract for the acquisition of commercial items in order to
10 implement a prohibition or requirement in this title.

11 “(b) In subsection (a), the term ‘commercial item’
12 has the meaning given such term in section 4(12) of the
13 Office of Federal Procurement Policy Act (41 U.S.C.
14 403(12)).”.

15 (3) ~~OFFICE OF FEDERAL PROCUREMENT POL-~~
16 ~~ICY ACT REQUIREMENT RELATING TO PROCUREMENT~~
17 ~~INTEGRITY CERTIFICATIONS.~~—Section 27(e)(7) of
18 the Office of Federal Procurement Policy Act (41
19 U.S.C. 423) is amended by adding at the end the
20 following new subparagraph:

21 “(C) This subsection does not apply to a contract for
22 the acquisition of commercial items.”.

23 (4) ~~CERTAIN PROVISIONS OF THE ANTI-KICK-~~
24 ~~BACK ACT OF 1986.~~—

1 (A) REQUIREMENT FOR CONTRACT
2 CLAUSE.—Section 7 of the Anti-Kickback Act
3 of 1986 (41 U.S.C. 57), as amended by section
4 4052, is further amended by inserting before
5 the period at the end of subsection (d) the fol-
6 lowing: “or to a prime contract for the acqui-
7 sition of commercial items (as defined in section
8 4(12) of such Act (41 U.S.C. 403(12))).”.

9 (B) INSPECTION AUTHORITY.—Section 8
10 of such Act (41 U.S.C. 58) is amended by add-
11 ing at the end the following: “This section does
12 not apply with respect to a prime contract for
13 the acquisition of commercial items (as defined
14 in section 4(12) of the Office of Federal Pro-
15 curement Policy Act (41 U.S.C. 403(12))).”.

16 (5) DRUG-FREE WORKPLACE ACT OF 1988.—
17 The Drug-Free Workplace Act of 1988 (subtitle D
18 of title V of Public Law 100-690; 41 U.S.C. 701 et
19 seq.), as amended by section 4057, is further
20 amended by inserting after the matter inserted by
21 such section 4057 the following: “, other than a con-
22 tract for the procurement of commercial items (as
23 defined in section 4(12) of such Act (41 U.S.C.
24 403(12))),”.

1 (6) ~~CLEAN AIR ACT.~~—Section 306 of the Clean
2 Air Act (~~42 U.S.C. 7606~~) is amended by adding at
3 the end the following new subsection:

4 “~~(f)(1) No certification by a contractor, and no con-~~
5 tract clause, may be required in the case of a contract
6 for the acquisition of commercial items in order to imple-
7 ment a prohibition or requirement of this section or a pro-
8 hibition or requirement issued in the implementation of
9 this section.

10 “~~(2) In paragraph (1), the term ‘commercial item’~~
11 has the meaning given such term in section 4(12) of the
12 Office of Federal Procurement Policy Act (~~41 U.S.C.~~
13 ~~403(12)~~).”.

14 (7) ~~MERCHANT MARINE ACT, 1936.~~—Section
15 901(b) of the Merchant Marine Act, 1936 (~~46~~
16 U.S.C. ~~1241(b)~~), as amended by section 4058, is
17 further amended by adding at the end the following
18 new paragraph:

19 “~~(4)(A) Paragraph (1) does not apply to a contract~~
20 for transportation of commercial items on ocean vessels.

21 “~~(B) In subparagraph (A), the term ‘commercial~~
22 item’ has the meaning given such term in section 4(12)
23 of the Office of Federal Procurement Policy Act (~~41~~
24 U.S.C. ~~403(12)~~).”.

1 **SEC. 8007. ADVOCATE FOR ACQUISITION OF COMMERCIAL**
2 **AND NONDEVELOPMENTAL ITEMS.**

3 (a) **ESTABLISHMENT.**—The Office of Federal Pro-
4 curement Policy Act (41 U.S.C. 401 et seq.), as amended
5 by section 8004, is further amended by adding at the end
6 the following:

7 “**ADVOCATE FOR ACQUISITION OF COMMERCIAL AND**
8 **NONDEVELOPMENTAL ITEMS**

9 “**SEC. 34. (a) ESTABLISHMENT.**—There is estab-
10 lished in the Office of Federal Procurement Policy the po-
11 sition of Advocate for Acquisition of Commercial and
12 Nondevelopmental Items.

13 “(b) **FUNCTIONS.**—The Advocate for Acquisition of
14 Commercial and Nondevelopmental Items shall—

15 “(1) monitor compliance by executive agencies
16 with the preference for the acquisition of commercial
17 and nondevelopmental items that is set forth in sec-
18 tion 29;

19 “(2) make recommendations and proposals to
20 the Administrator regarding the reform of procure-
21 ment statutes and regulations to implement that
22 preference; and

23 “(3) report to the Administrator on the pro-
24 spective effect of proposed legislation and regula-
25 tions on the acquisition of commercial items and
26 nondevelopmental items.

1 “(c) REPORT.—The Administrator shall submit to
2 the Committee on Governmental Affairs of the Senate and
3 the Committee on Government Operations of the House
4 of Representatives an annual report describing for the
5 year covered by the report all actions taken by the Office
6 of Federal Procurement Policy to promote the acquisition
7 of commercial items and other nondevelopmental items.”.

8 (b) RESPONSIBILITIES OF THE ADVOCATE FOR COM-
9 PETITION.—Section 20(c) of such Act (41 U.S.C. 418(c))
10 is amended to read as follows:

11 “(c) The advocate for competition for each procuring
12 activity shall be responsible for promoting full and open
13 competition, promoting the acquisition of commercial
14 items and other nondevelopmental items, and challenging
15 barriers to such acquisition, including such barriers as un-
16 necessarily restrictive statements of need, unnecessarily
17 detailed specifications, and unnecessarily burdensome con-
18 tract clauses.”.

19 (c) REPEAL OF SUPERSEDED PROVISION.—Section
20 28 of such Act (41 U.S.C. 424) is repealed.

21 **SEC. 8008. PROVISIONS NOT AFFECTED.**

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

1 (1) section 111 of the Federal Property and
2 Administrative Services Act of 1949 (40 U.S.C.
3 759), popularly referred to as the “Brooks Auto-
4 matic Data Processing Act”;

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

9 (3) section 8(a) of the Small Business Act (15
10 U.S.C. 637(a)) or any other provision of that Act;
11 or

12 (4) the Act of June 25, 1938 (41 U.S.C. 46-
13 48c), that was revised and reenacted in the Act of
14 June 23, 1971 (85 Stat. 77), popularly referred to
15 as the “Javits-Wagner-O’Day Act”.

16 **SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL**
17 **GOVERNMENT USE OF MARKET RESEARCH.**

18 (a) **REPORT REQUIRED.**—Not later than 2 years
19 after the date of the enactment of this Act, the Comptrol-
20 ler General of the United States shall submit to the Con-
21 gress a report on the use of market research by the Fed-
22 eral Government in support of the procurement of com-
23 mercial items and nondevelopmental items.

24 (b) **CONTENT OF REPORT.**—The report shall include
25 the following:

1 (1) A review of existing Federal Government
2 market research efforts to gather data concerning
3 commercial and other nondevelopmental items.

4 (2) A review of the feasibility of creating a Gov-
5 ernment-wide data base for storing, retrieving, and
6 analyzing market data, including use of existing
7 Federal Government resources.

8 (3) Any recommendations for changes in law or
9 regulations that the Comptroller General considers
10 appropriate.

11 **TITLE IX—EFFECTIVE DATE**

12 **SEC. 9001. EFFECTIVE DATE.**

13 Except as otherwise provided in this Act, this Act and
14 the amendments made by this Act shall take effect on the
15 date of the enactment of this Act.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Federal Acquisition*
18 *Streamlining Act of 1994”.*

19 **SEC. 2. TABLE OF CONTENTS.**

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

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.

- Sec. 1004. Task order contracts for advisory and assistance services.*
Sec. 1005. Acquisition of expert services.

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. Award of costs and fees in agency settlement of protests.
Sec. 1017. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

- Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.*
Sec. 1022. Technical and conforming amendments.

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.
Sec. 1054. Task order contracts for advisory and assistance services.
Sec. 1055. Acquisition of expert services.
Sec. 1056. Continued occupancy of leased space.

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. Award of costs and fees in agency settlement of protests.
Sec. 1067. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

- Sec. 1071. Agency head determination regarding use of cost type or incentive contract.*
Sec. 1072. Multiyear contracting authority.
Sec. 1073. Severable services contracts crossing fiscal years.
Sec. 1074. Economy Act purchases.

PART III—ACQUISITIONS GENERALLY

- Sec. 1091. Policy regarding consideration of contractor past performance.*
Sec. 1092. Repeal of requirement for annual report on competition.

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. Limitation on authority to require a submission not otherwise required.
Sec. 1204. Additional special rules for commercial items.
Sec. 1205. Right of United States to examine contractor records.
Sec. 1206. Required regulations.
Sec. 1207. Consistency of time references.
Sec. 1208. Exception for transfers between divisions, subsidiaries, and affiliates.
Sec. 1209. 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. Research projects.*
Sec. 1302. Elimination of inflexible terminology regarding coordination and communication of defense research activities.

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 THE FEDERAL COURTS

- Sec. 1421. Nonexclusivity of remedies.*
Sec. 1422. Jurisdiction of the United States Court of Federal Claims.

PART III—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.
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Sec. 1436. Dismissal agreements.
Sec. 1437. Jurisdiction of district courts.
Sec. 1438. Matters to be covered in regulations.
Sec. 1439. Definitions.

Subtitle E—Definitions and Other Matters*PART I—ARMED SERVICES ACQUISITIONS*

- Sec. 1501. Definitions.*

- Sec. 1502. Delegation of procurement functions.*
Sec. 1503. Determinations and decisions.
Sec. 1504. Undefinitized contractual actions: restrictions.
Sec. 1505. Production special tooling and production special test equipment: contract terms and conditions.
Sec. 1506. Regulations for bids.

PART II—CIVILIAN AGENCY ACQUISITIONS

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

TITLE II—CONTRACT ADMINISTRATION

Subtitle A—Contract Payment

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2001. Contract financing.*
Sec. 2002. Contracts: vouchering procedures.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2051. Contract financing.*

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2101. Allowable contract costs.*
Sec. 2102. Contract profit controls during emergency periods.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2151. Allowable contract costs.*

PART III—ACQUISITIONS GENERALLY

- Sec. 2191. Travel expenses of government contractors.*

Subtitle C—Audit and Access to Records

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

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- Sec. 2251. Authority to examine records of contractors.*

Subtitle D—Cost Accounting Standards

- Sec. 2301. Exceptions to coverage.*
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Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality

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- Sec. 2401. Procurement of critical aircraft and ship spare parts; quality control.*
Sec. 2402. Contractor guarantees regarding weapon systems.

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- Sec. 2451. Section 3737 of the Revised Statutes: expansion of authority to prohibit setoffs against assignees; reorganization of section; revision of obsolete provisions.*
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Subtitle F—Claims and Disputes

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- Sec. 2501. Certification of contract claims.*
Sec. 2502. Shipbuilding claims.

PART II—ACQUISITIONS GENERALLY

- Sec. 2551. Claims jurisdiction of United States district courts and the United States Court of Federal Claims.*
Sec. 2552. Contract Disputes Act improvements.
Sec. 2553. Extension of alternative dispute resolution authority.
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TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

- Sec. 3001. Requirement for independent cost estimates and manpower estimates before development or production.*
Sec. 3002. Enhanced program stability.
Sec. 3003. Repeal of requirement to designate certain major defense acquisition programs as defense enterprise programs.
Sec. 3004. Repeal of requirement for competitive prototyping in major programs.
Sec. 3005. Repeal of requirement for competitive alternative sources in major programs.

Subtitle B—Testing Statutes

- Sec. 3011. Director of Operational Test and Evaluation to report directly to Secretary of Defense.*
Sec. 3012. Responsibility of Director of Operational Test and Evaluation for live fire testing.
Sec. 3013. Requirement for unclassified version of annual report on operational test and evaluation.

Subtitle C—Service Specific Laws

- Sec. 3021. Gratuitous services of officers of certain reserve components.*
Sec. 3022. Authority to rent samples, drawings, and other information to others.
Sec. 3023. Civil Reserve Air Fleet.
Sec. 3024. Exchange of personnel.

- Sec. 3025. Scientific investigation and research for the Navy.*
Sec. 3026. Construction of combatant and escort vessels and assignment of vessel projects.
Sec. 3027. Repeal of requirement for construction of vessels on Pacific coast.
Sec. 3028. Authority to transfer by gift a vessel stricken from Naval Vessel Register.
Sec. 3029. Naval salvage facilities.

Subtitle D—Department of Defense Commercial and Industrial Activities

- Sec. 3051. Factories and arsenals: manufacture at.*
Sec. 3052. Accounting requirement for contracted advisory and assistance services.

Subtitle E—Fuel- and Energy-Related Laws

- Sec. 3061. Liquid fuels and natural gas: contracts for storage, handling, or distribution.*

Subtitle F—Fiscal Statutes

- Sec. 3071. Disbursement of funds of military department to cover obligations of another agency of Department of Defense.*

Subtitle G—Miscellaneous

- Sec. 3081. Obligation of funds: limitation.*
Sec. 3082. Repeal of requirements regarding product evaluation activities.
Sec. 3083. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.
Sec. 3084. Soft drink supplies for exchange stores.
Sec. 3085. Repeal of preference for recycled toner cartridges.

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

Subtitle A—Simplified Acquisition Threshold

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- Sec. 4001. Simplified acquisition threshold.*

PART II—SIMPLIFICATION OF PROCEDURES

- Sec. 4011. Simplified acquisition procedures.*
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- Sec. 4101. *Armed services acquisitions.*
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- Sec. 4151. *Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.*
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TITLE V—ACQUISITION MANAGEMENT**Subtitle A—Armed Services Acquisitions**

- Sec. 5001. *Performance based management.*
 Sec. 5002. *Results oriented acquisition program cycle.*
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Subtitle B—Civilian Agency Acquisitions

- Sec. 5051. *Performance based management.*
 Sec. 5052. *Results-oriented acquisition process.*

Subtitle C—Miscellaneous

- Sec. 5091. *Contractor exceptional performance awards.*
 Sec. 5092. *Department of Defense acquisition of intellectual property rights.*

TITLE VI—STANDARDS OF CONDUCT**Subtitle A—Ethics Provisions**

- Sec. 6001. *Amendments to Office of Federal Procurement Policy Act.*
 Sec. 6002. *Amendments to title 18, United States Code.*
 Sec. 6003. *Repeal of superseded and obsolete laws.*
 Sec. 6004. *Implementation.*

Subtitle B—Additional Amendments

- Sec. 6051. *Contracting functions performed by Federal personnel.*
 Sec. 6052. *Repeal of executed requirement for study and report.*
 Sec. 6053. *Interests of Members of Congress.*
 Sec. 6054. *Waiting period for significant changes proposed for acquisition regulations.*

Subtitle C—Whistleblower Protection

Sec. 6101. Armed services procurements.

Sec. 6102. Governmentwide whistleblower protections for contractor employees.

TITLE VII—DEFENSE TRADE AND COOPERATION

Sec. 7001. Purchases of foreign goods.

Sec. 7002. International cooperative agreements.

Sec. 7003. Acquisition, cross-servicing agreements, and standardization.

TITLE VIII—COMMERCIAL ITEMS

Sec. 8001. Definitions.

Sec. 8002. Preference for acquisition of commercial items and nondevelopmental items.

Sec. 8003. Acquisition of commercial items.

Sec. 8004. Class waiver of applicability of certain laws.

Sec. 8005. Inapplicability of certain provisions of law.

Sec. 8006. Flexible deadlines for submission of offers of commercial items.

Sec. 8007. Advocates for acquisition of commercial and nondevelopmental items.

Sec. 8008. Provisions not affected.

Sec. 8009. Comptroller General review of Federal Government use of market research.

TITLE IX—EFFECTIVE DATES AND IMPLEMENTATION

Sec. 9001. Effective dates.

Sec. 9002. Implementing regulations.

Sec. 9003. Evaluation by the Comptroller General.

Sec. 9004. Data collection through the Federal procurement data system.

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

1 (2) in subsection (g)(1), by striking out “regula-
2 tions modified” and all that follows through “note)”
3 and inserting in lieu thereof “Federal Acquisition
4 Regulation”.

5 **SEC. 1002. ESTABLISHMENT OR MAINTENANCE OF ALTER-**
6 **NATIVE SOURCES OF SUPPLY.**

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

9 (1) in paragraph (1)—

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

12 (B) by striking out the period at the end of
13 subparagraph (C) and inserting in lieu thereof a
14 semicolon; and

15 (C) by adding at the end the following new
16 subparagraphs:

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

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

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

8 (4) in paragraph (4), as redesignated by para-
9 graph (2), by striking out “paragraphs (1) and (2)”
10 and inserting in lieu thereof “paragraphs (1) and
11 (3)”.

12 **SEC. 1003. CLARIFICATION OF APPROVAL AUTHORITY FOR**
13 **USE OF PROCEDURES OTHER THAN FULL**
14 **AND OPEN COMPETITION.**

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

19 **SEC. 1004. TASK ORDER CONTRACTS FOR ADVISORY AND**
20 **ASSISTANCE SERVICES.**

21 (a) *AUTHORITY.*—

22 (1) *IN GENERAL.*—Chapter 137 of title 10,
23 United States Code, is amended by inserting after sec-
24 tion 2304 the following new section:

1 **“§ 2304a. Task order contracts for advisory and assist-**
2 **ance services**

3 “(a) *AUTHORITY TO AWARD.*—(1) *Subject to the re-*
4 *quirements of this section, the head of an agency may enter*
5 *into a contract for advisory and assistance services that*
6 *does not procure or specify a firm quantity of services (other*
7 *than a minimum or maximum quantity) and that provides*
8 *for the issuance of task orders during the specified period*
9 *of the contract.*

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

13 “(b) *LIMITATION ON CONTRACT PERIOD.*—*The period*
14 *of a contract referred to in subsection (a), including all pe-*
15 *riods of extensions of the contract under options, modifica-*
16 *tions, or otherwise, may not exceed 5 years unless a longer*
17 *period is specifically authorized in a law that is applicable*
18 *to such contract.*

19 “(c) *CONTRACT PROCEDURES.*—(1) *The head of an*
20 *agency may use procedures other than competitive proce-*
21 *dures to enter into a contract referred to in subsection (a)*
22 *only if an exception in subsection (c) of section 2304 of this*
23 *title applies to the contract and the use of such procedures*
24 *is approved in accordance with subsection (f) of such sec-*
25 *tion.*

1 “(2) The notice required by section 18 of the Office
2 of Federal Procurement Policy Act (41 U.S.C. 416) and sec-
3 tion 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall
4 reasonably and fairly describe the general scope, magnitude,
5 and duration of the proposed contract in a manner that
6 would reasonably enable a potential offeror to decide wheth-
7 er to request the solicitation and consider submitting an
8 offer.

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

10 “(A) The period of the contract, including the
11 number of options to extend the contract and the pe-
12 riod for which the contract may be extended under
13 each option, if any.

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

16 “(C) A statement of work, specifications, or other
17 description that reasonably describes the general
18 scope, nature, complexity, and purposes of the services
19 to be procured under the contract.

20 “(4)(A) The head of an agency may, on the basis of
21 one solicitation, award separate contracts under this section
22 for the same or similar services to two or more sources if
23 the solicitation states that the head of the agency has the
24 option to do so.

1 “(B) If, in the case of a contract for advisory and as-
2 sistance services to be entered into under the authority of
3 this section, the contract period is to exceed 3 years and
4 the contract amount is estimated to exceed \$10,000,000 (in-
5 cluding all options), the solicitation shall—

6 “(i) provide for a multiple award authorized
7 under subparagraph (A); and

8 “(ii) include a statement that the head of the
9 agency may also elect to award only one contract if
10 the head of the agency determines in writing that
11 only one of the offerers is capable of providing the
12 services required at the level of quality required.

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

18 “(5) A contract referred to in subsection (a) shall con-
19 tain the same information that is required by paragraph
20 (3) to be included in the solicitation of offers for that con-
21 tract.

22 “(d) ORDER PROCEDURES.—(1) The following actions
23 are not required for a task order issued under a contract
24 entered into in accordance with this section:

1 “(A) A separate notice for such order under sec-
2 tion 18 of the Office of Federal Procurement Policy
3 Act (41 U.S.C. 416) or section 8(e) of the Small Busi-
4 ness Act (15 U.S.C. 637(e)).

5 “(B) Except as provided in paragraph (2), a
6 competition (or a waiver of competition approved in
7 accordance with section 2304(f) of this title) that is
8 separate from that used for entering into the contract.

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

15 “(i) the agency’s need for the services ordered is
16 of such unusual urgency that competition would re-
17 sult in unacceptable delays in fulfilling the agency’s
18 needs;

19 “(ii) only one such contractor is capable of pro-
20 viding the services required at the level of quality re-
21 quired because the services ordered are unique or so
22 highly specialized;

23 “(iii) the task order should be issued on a sole-
24 source basis in the interest of economy and efficiency

1 *because it is a logical follow-on to a task order al-*
2 *ready issued on a competitive basis; or*

3 *“(iv) the order must be placed with a particular*
4 *contractor in order to satisfy a minimum guarantee.*

5 *“(B) When a task order is issued in accordance with*
6 *subparagraph (A), the order shall include a statement of*
7 *work that clearly specifies all tasks to be performed under*
8 *the order.*

9 *“(3) A protest is not authorized in connection with the*
10 *issuance or proposed issuance of a task order except for a*
11 *protest on the ground that the order increases the scope, pe-*
12 *riod, or maximum value of the contract under which the*
13 *order is issued.*

14 *“(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM*
15 *VALUE OF CONTRACT.—(1) A task order may not increase*
16 *the scope, period, or maximum value of the contract under*
17 *which the order is issued. The scope, period, or maximum*
18 *value of the contract may be increased only by modification*
19 *of the contract.*

20 *“(2) Unless use of procedures other than competitive*
21 *procedures is authorized by an exception in subsection (c)*
22 *of section 2304 of this title and approved in accordance*
23 *with subsection (f) of such section, competitive procedures*
24 *shall be used for making such a modification.*

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

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

11 “(i) the award of a follow-on contract has been
12 delayed by circumstances that were not reasonably
13 foreseeable at the time the initial contract was entered
14 into; and

15 “(ii) the extension is necessary in order to ensure
16 continuity of the receipt of services pending the
17 award of, and commencement of performance under,
18 the follow-on contract.

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

22 “(f) TASK ORDER OMBUDSMAN.—Each head of an
23 agency who awards multiple contracts pursuant to sub-
24 section (c)(4) shall appoint or designate a task order om-
25 budsman who shall be responsible for reviewing complaints

1 *from the contractors on such contracts and ensuring that*
2 *all of the contractors are afforded a fair opportunity to be*
3 *considered for task orders when required under subsection*
4 *(d)(2). The task order ombudsman shall be a senior agency*
5 *official who is independent of the contracting officer for the*
6 *contracts and may be the agency's competition advocate.*

7 “(g) *INAPPLICABILITY TO CERTAIN CONTRACTS.—This*
8 *section does not apply to a contract for the acquisition of*
9 *property or services that includes acquisition of advisory*
10 *and assistance services if the head of an agency entering*
11 *into such contract determines that, under the contract, advi-*
12 *sory and assistance services are necessarily incident to, and*
13 *not a significant component of, the contract.*

14 “(h) *RELATIONSHIP TO OTHER CONTRACTING AU-*
15 *THORITY.—Nothing in this section may be construed to*
16 *limit the authority of the head of an agency to enter into*
17 *single or multiple task order contracts, or single or multiple*
18 *delivery order contracts, for property or services (other than*
19 *advisory and assistance services) under other provisions of*
20 *this chapter or under any other provision of law.*

21 “(i) *ADVISORY AND ASSISTANCE SERVICES DE-*
22 *FINED.—In this section, the term ‘advisory and assistance*
23 *services’ has the meaning given such term in section 1105(g)*
24 *of title 31.’”.*

1 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
2 *tions at the beginning of such chapter is amended by*
3 *inserting after the item relating to section 2304 the*
4 *following new item:*

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

5 (b) *REPEAL OF SUPERSEDED PROVISION.*—*Section*
6 *2304 of title 10, United States Code, is amended by striking*
7 *out subsection (j).*

8 (c) *CONFORMING AMENDMENT FOR PROFESSIONAL*
9 *AND TECHNICAL SERVICES.*—*Section 2331 of title 10,*
10 *United States Code, is amended by striking out subsection*
11 *(c).*

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

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

15 (1) *by striking out “or (B)” and inserting in*
16 *lieu thereof “(B)”; and*

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

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

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

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

6 *(1) in paragraph (2)—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (5); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(v) in the case of a proposal that incorporates
20 equipment that is a commercial item, the make and
21 model of the item incorporated in the offer of the contractor awarded the contract; and
22

23 “(vi) reasonable responses to questions posed by
24 the debriefed offeror as to whether source selection
25 procedures set forth in the solicitation, applicable reg-

1 *ulations, and other applicable authorities were fol-*
2 *lowed by the agency.*

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

8 *“(i) trade secrets;*

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

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

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

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

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

4 “(ii) the comparable debriefing information that
5 was prepared with respect to the original offerors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **“§ 2305a. Two-phase selection procedures**

24 “(a) *PROCEDURES AUTHORIZED.*—The head of an
25 agency may use two-phase selection procedures for entering

1 *into a contract for the acquisition of property or services*
2 *when the head of the agency determines that three or more*
3 *offers will be received for such contract, substantial design*
4 *work must be performed before an offeror can develop a*
5 *price or cost proposal for such contract, and the offerors*
6 *will incur a substantial amount of expenses in preparing*
7 *the offers.*

8 “(b) *PROCEDURES DESCRIBED.—Two-phase selection*
9 *procedures consist of the following:*

10 “(1) *The head of the agency solicits proposals*
11 *that—*

12 “(A) *include information on the offerors’—*

13 “(i) *technical approach; and*

14 “(ii) *technical qualifications; and*

15 “(B) *do not include—*

16 “(i) *detailed design information; or*

17 “(ii) *cost or price information.*

18 “(2) *The head of the agency evaluates the propos-*
19 *als on the basis of evaluation criteria set forth in the*
20 *solicitation, except that the head of the agency does*
21 *not consider cost-related or price-related evaluation*
22 *factors.*

23 “(3) *The head of the agency selects at least three*
24 *offerors as the most highly qualified to provide the*
25 *property or services under the contract and requests*

1 *the selected offerors to submit competitive proposals*
2 *that include cost or price information.*

3 *“(4) The head of the agency awards the contract*
4 *in accordance with section 2305(b)(4) of this title.*

5 *“(c) RESOURCE COMPARISON CRITERION RE-*
6 *QUIRED.—In using two-phase selection procedures for enter-*
7 *ing into a contract, the head of the agency shall establish*
8 *a resource criterion or a financial criterion applicable to*
9 *the contract in order to provide a consistent basis for com-*
10 *paring the offerors and their proposals.*

11 *“(d) TWO-PHASE SELECTION PROCEDURES DE-*
12 *FINED.—In this section, the term ‘two-phase selection proce-*
13 *dures’ means procedures described in subsection (b) that are*
14 *used for the selection of a contractor on the basis of cost*
15 *or price and other evaluation criteria to provide property*
16 *or services in accordance with the provisions of a contract*
17 *which requires the contractor to design the property to be*
18 *acquired under the contract and produce or construct such*
19 *property.*

20 *“(e) APPLICABILITY ONLY TO DEPARTMENT OF DE-*
21 *FENSE.—This section does not apply to the Coast Guard*
22 *or the National Aeronautics and Space Administration.”.*

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

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

1 **Subpart C—Kinds of Contracts**

2 **SEC. 1021. SECRETARIAL DETERMINATION REGARDING USE**
3 **OF COST TYPE OR INCENTIVE CONTRACT.**

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

6 **SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

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

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

20 **SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL REPORT**
21 **BY ADVOCATES FOR COMPETITION.**

22 *Subsection (c) of section 2318 of title 10, United States*
23 *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 *Section 303(b) of the Federal Property and Adminis-*
18 *trative Services Act of 1949 (41 U.S.C. 253(b)) is amend-*
19 *ed—*

20 (1) *in paragraph (1)—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 *“TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE*
16 *SERVICES*

17 *“SEC. 303H. (a) AUTHORITY TO AWARD.—(1) Subject*
18 *to the requirements of this section, the head of an executive*
19 *agency may enter into a contract for advisory and assist-*
20 *ance services that does not procure or specify a firm quan-*
21 *tity of services (other than a minimum or maximum quan-*
22 *tity) and that provides for the issuance of task orders dur-*
23 *ing the specified period of the contract.*

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

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

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

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

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

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

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

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

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

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

16 “(i) provide for a multiple award authorized
17 under subparagraph (A); and

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

23 “(C) Subparagraph (B) does not apply in the case of
24 a solicitation for which the agency head determines in writ-
25 ing that, because the services required under the contract

1 *are unique or highly specialized, it is not practicable to*
2 *award more than one contract.*

3 “(5) *A contract referred to in subsection (a) shall con-*
4 *tain the same information that is required by paragraph*
5 *(3) to be included in the solicitation of offers for that con-*
6 *tract.*

7 “(d) *ORDER PROCEDURES.—(1) The following actions*
8 *are not required for a task order issued under a contract*
9 *entered into in accordance with this section:*

10 “(A) *A separate notice for such order under sec-*
11 *tion 18 of the Office of Federal Procurement Policy*
12 *Act (41 U.S.C. 416) or section 8(e) of the Small Busi-*
13 *ness Act (15 U.S.C. 637(e)).*

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

18 “(2)(A) *When multiple contracts are awarded pursu-*
19 *ant to subsection (c)(4), all contractors awarded such con-*
20 *tracts shall be provided a fair opportunity to be considered,*
21 *pursuant to procedures set forth in the contracts, for each*
22 *task order in excess of \$2,500 that is to be issued under*
23 *any of the contracts unless—*

24 “(i) *the agency’s need for the services ordered is*
25 *of such unusual urgency that competition would re-*

1 *sult in unacceptable delays in fulfilling the agency's*
2 *needs;*

3 *“(ii) only one such contractor is capable of pro-*
4 *viding the services required at the level of quality re-*
5 *quired because the services ordered are unique or*
6 *highly specialized;*

7 *“(iii) the task order should be issued on a sole-*
8 *source basis in the interest of economy and efficiency*
9 *because it is a logical follow-on to a task order al-*
10 *ready issued on a competitive basis; or*

11 *“(iv) the order must be placed with a particular*
12 *contractor in order to satisfy a minimum guarantee.*

13 *“(B) When a task order is issued in accordance with*
14 *subparagraph (A), the order shall include a statement of*
15 *work that clearly specifies all tasks to be performed under*
16 *the order.*

17 *“(3) A protest is not authorized in connection with the*
18 *issuance or proposed issuance of a task order except for a*
19 *protest on the ground that the order increases the scope, pe-*
20 *riod, or maximum value of the contract under which the*
21 *order is issued.*

22 *“(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM*
23 *VALUE OF CONTRACT.—(1) A task order may not increase*
24 *the scope, period, or maximum value of the contract under*
25 *which the order is issued. The scope, period, or maximum*

1 *value of the contract may be increased only by modification*
2 *of the contract.*

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

8 “(3) *Notice regarding the modification shall be pro-*
9 *vided in accordance with section 18 of the Office of Federal*
10 *Procurement Policy Act (41 U.S.C. 416) and section 8(e)*
11 *of the Small Business Act (15 U.S.C. 637(e)).*

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

18 “(i) *the award of a follow-on contract has been*
19 *delayed by circumstances that were not reasonably*
20 *foreseeable at the time the initial contract was entered*
21 *into; and*

22 “(ii) *the extension is necessary in order to ensure*
23 *continuity of the receipt of services pending the*
24 *award of, and commencement of performance under,*
25 *the follow-on contract.*

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

4 “(f) *TASK ORDER OMBUDSMAN.*—Each agency head
5 who awards multiple contracts pursuant to subsection
6 (c)(4) shall appoint or designate a task order ombudsman
7 who shall be responsible for reviewing complaints from the
8 contractors on such contracts and ensuring that all of the
9 contractors are afforded a fair opportunity to be considered
10 for task orders when required under subsection (d)(2). The
11 task order ombudsman shall be a senior agency official who
12 is independent of the contracting officer for the contracts
13 and may be the agency’s competition advocate.

14 “(g) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—This
15 section does not apply to a contract for the acquisition of
16 property or services that includes acquisition of advisory
17 and assistance services if the agency head entering into such
18 contract determines that, under the contract, advisory and
19 assistance services are necessarily incident to, and not a
20 significant component of, the contract.

21 “(h) *RELATIONSHIP TO OTHER CONTRACTING AU-*
22 *THORITY.*—Nothing in this section may be construed to
23 limit the authority of the head of an agency to enter into
24 single or multiple task order contracts, or single or multiple
25 delivery order contracts, for goods or services (other than

1 *advisory and assistance services) under other provisions of*
2 *this title or under any other provision of law.*

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

7 (b) *CLERICAL AMENDMENT.*—*The table of contents in*
8 *the first section is amended by inserting after the item relat-*
9 *ing to section 303G the following new item:*

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

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

11 (a) *EXCEPTION TO REQUIREMENT FOR USE OF COM-*
12 *PETITIVE PROCEDURES.*—*Section 303(c)(3) of the Federal*
13 *Property and Administrative Services Act of 1949 (41*
14 *U.S.C. 253(c)) is amended—*

15 (1) *by striking out “or (B)” and inserting in*
16 *lieu thereof “(B)”; and*

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

1 **(b) PROCUREMENT NOTICE.**—

2 **(1) AMENDMENT OF OFFICE OF FEDERAL PRO-**
3 **CUREMENT POLICY ACT.**—Section 18(c) of the Office
4 of Federal Procurement Policy Act (41 U.S.C. 416(c))
5 is amended—

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

8 (B) by striking out the period at the end of
9 subparagraph (E) and inserting in lieu thereof
10 “; or”; and

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

12 “(F) the procurement is for the services of an ex-
13 pert for use in any litigation or dispute (including
14 any reasonably foreseeable litigation or dispute) in-
15 volving the Federal Government in any trial, hearing,
16 or proceeding before any court, administrative tribu-
17 nal, or agency, or in any part of an alternative dis-
18 pute resolution process, whether or not the expert is
19 expected to testify.”.

20 **(2) AMENDMENT OF SMALL BUSINESS ACT.**—Sec-
21 tion 8(g) of the Small Business Act (15 U.S.C.
22 637(c)) is amended—

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

1 (B) by striking out the period at the end of
2 subparagraph (E) and inserting in lieu thereof
3 “; or”; and

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

5 “(F) the procurement is for the services of an ex-
6 pert for use in any litigation or dispute (including
7 preparation for any foreseeable litigation or dispute)
8 that involves or could involve the Federal Government
9 in any trial, hearing, or proceeding before any court,
10 administrative tribunal, or agency, or in any part of
11 an alternative dispute resolution process, whether or
12 not the expert is expected to testify.”.

13 (c) *REPEAL OF AMENDMENTS TO UNCODIFIED*
14 *TITLE.*—The following provisions of law are repealed:

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

18 (2) Section 529 of Public Law 102–393 (106
19 Stat. 1761) and the matters inserted and added by
20 that section.

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

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

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

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

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

14 “(i) the occupying agency has a continuing need
15 for the space;

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

17 “(iii) the lessor is willing to continue to provide
18 the space at a fair market price determined by the
19 contracting officer on the basis of a market survey or
20 an appraisal conducted in accordance with generally
21 accepted real property appraisal standards.

22 “(B) The authority under subparagraph (A) to use
23 procedures other than competitive procedures to enter into
24 a follow-on lease may be exercised not more than once to
25 provide for continued occupancy of particular space in real

1 *property by a particular Federal agency. The period of such*
2 *follow-on lease may not exceed 5 years.*

3 *“(C) Nothing in this paragraph may be construed to*
4 *prohibit the use of procedures other than competitive proce-*
5 *dures to enter into a follow-on lease of real property for*
6 *continued occupancy of particular space in real property*
7 *by a Federal agency when an exception set forth in sub-*
8 *section (c) applies and the use of such procedures is justified*
9 *and approved in accordance with subsection (f).”.*

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

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

13 *(a) CONTENT OF SOLICITATION.—Section 303A of the*
14 *Federal Property and Administrative Services Act of 1949*
15 *(41 U.S.C. 253a) is amended—*

16 *(1) in subsection (b)(1)(A)—*

17 *(A) by inserting “and significant*
18 *subfactors” after “all significant factors”; and*

19 *(B) by striking out “(including price)” and*
20 *inserting “(including cost or price, cost-related*
21 *or price-related factors and subfactors, and*
22 *noncost-related or nonprice-related factors and*
23 *subfactors)”;*

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 propos-
4 als are intended to be evaluated with, and
5 award made after, discussions with the
6 offerors, or a statement that the proposals
7 are intended to be evaluated, and award
8 made, without discussions with the offerors
9 (other than discussions conducted for the
10 purpose of minor clarification) unless dis-
11 cussions are determined to be necessary;
12 and”;

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

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

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

1 “(B) shall include cost or price to the Govern-
2 ment as an evaluation factor that must be considered
3 in the evaluation of proposals; and

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

7 “(i) significantly more important than cost
8 or price;

9 “(ii) approximately equal in importance to
10 cost or price; or

11 “(iii) significantly less important than cost
12 or price.

13 “(2) Nothing in this subsection prohibits an agency
14 from—

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

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

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

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

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

4 (3) in subsection (d)—

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

7 “(1) An agency head shall evaluate competitive propos-
8 als in accordance with subsection (a) and may award a
9 contract—

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

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

22 (B) by striking out paragraphs (2) and (3)
23 and by redesignating paragraph (4) as para-
24 graph (2); and

1 *section 1061(a)(4), is further amended by adding at the end*
2 *the following new subsection:*

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

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

11 (a) *SEALED BID PROCEDURES.*—Subsection (c) of sec-
12 tion 303B of the Federal Property and Administrative
13 Services Act of 1949 (41 U.S.C. 253b) is amended by add-
14 ing at the end the following: “As soon as practicable after
15 the date of contract award, the agency head shall, in accord-
16 ance with procedures prescribed in the Federal Acquisition
17 Regulation, notify all offerors not awarded the contract that
18 the contract has been awarded.”.

19 (b) *COMPETITIVE PROPOSALS PROCEDURES.*—Para-
20 graph (2) of section 303B(d) of the Federal Property and
21 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),
22 as redesignated by section 1061(b)(3)(B), is amended in the
23 second sentence by striking out “source and shall promptly
24 notify” and inserting in lieu thereof “source. As soon as
25 practicable after the date of contract award, the agency

1 *head shall, in accordance with procedures prescribed in the*
2 *Federal Acquisition Regulation, notify”.*

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

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

6 *(1) by redesignating subsections (e) and (f) as*
7 *subsections (f) and (g), respectively; and*

8 *(2) by inserting after subsection (d) the following*
9 *new subsection (e):*

10 *“(e)(1) When a contract is awarded by the head of an*
11 *executive agency on the basis of competitive proposals, an*
12 *unsuccessful offeror, upon written request received by the*
13 *agency within 3 days after the date on which the unsucces-*
14 *ful offeror receives the notification of the contract award,*
15 *shall be debriefed and furnished the basis for the selection*
16 *decision and contract award. An employee of the executive*
17 *agency shall debrief the offeror promptly after receipt of the*
18 *request by the agency.*

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

20 *“(A) the executive agency’s evaluation of the sig-*
21 *nificant weak or deficient factors in the offeror’s offer;*

22 *“(B) the overall evaluated cost and technical rat-*
23 *ing of the offer of the contractor awarded the contract*
24 *and the overall evaluated cost and technical rating of*
25 *the offer of the debriefed offeror;*

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

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

3 “(E) in the case of a proposal that incorporates
4 equipment that is a commercial item, the make and
5 model of the item incorporated in the offer of the con-
6 tractor awarded the contract; and

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

12 “(3) The debriefing may not include point-by-point
13 comparisons of the debriefed offeror’s offer with other offers
14 and may not disclose any information that is exempt from
15 disclosure under section 552 of title 5, United States Code,
16 including information relating to—

17 “(A) trade secrets;

18 “(B) privileged or confidential manufacturing
19 processes and techniques; and

20 “(C) commercial and financial information that
21 is privileged or confidential, including cost break-
22 downs, profit, indirect cost rates, and similar infor-
23 mation.

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

4 “(5) *If, within one year after the date of the contract*
5 *award and as a result of a successful procurement protest*
6 *or otherwise, the executive agency seeks to fulfill the require-*
7 *ment under the contract either on the basis of a new solici-*
8 *tation of offers or on the basis of new best and final offers*
9 *requested for that contract, the agency head shall make*
10 *available to all offerors—*

11 “(A) *the information provided in debriefings*
12 *under this subsection regarding the offer of the con-*
13 *tractor awarded the contract; and*

14 “(B) *the comparable debriefing information that*
15 *was prepared with respect to the original offerors.*

16 “(6) *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), as amended by*
21 *section 1064(1), is further amended by adding at the end*
22 *the following:*

23 “(h)(1) *If, in the case of a solicitation for a contract*
24 *issued by, or an award or proposed award of a contract*
25 *by, an agency head, a protest is filed pursuant to the proce-*

1 *dures in subchapter V of chapter 35 of title 31, United*
2 *States Code, and an actual or prospective offeror so re-*
3 *quests, a file of the protest shall be established by the procur-*
4 *ing activity and reasonable access shall be provided to ac-*
5 *tual or prospective offerors.*

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

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

16 **SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
17 **MENT OF PROTESTS.**

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

22 “(i) If, in connection with a protest, an agency head
23 determines that a solicitation, proposed award, or award
24 does not comply with the requirements of law or regulation,
25 the agency head may take—

1 “(1) any action set out in subparagraphs (A)
2 through (F) of subsection (b)(1) of section 3554 of title
3 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. TWO-PHASE SELECTION PROCEDURES.**

8 (a) *PROCEDURES AUTHORIZED.*—Title III of the Fed-
9 eral Property and Administrative Services Act of 1949 (41
10 U.S.C. 251 et seq.), as amended by section 1054, is further
11 amended by inserting after section 303H the following new
12 section:

13 “TWO-PHASE SELECTION PROCEDURES

14 “SEC. 303I. (a) *PROCEDURES AUTHORIZED.*—The
15 head of an executive agency may use two-phase selection
16 procedures for entering into a contract for the acquisition
17 of property or services when the agency head determines
18 that three or more offers will be received for such contract,
19 substantial design work must be performed before an offeror
20 can develop a price or cost proposal for such contract, and
21 the offerors will incur a substantial amount of expenses in
22 preparing the offers.

23 “(b) *PROCEDURES DESCRIBED.*—Two-phase selection
24 procedures consist of the following:

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

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

1 “(i) technical approach; and

2 “(ii) technical qualifications; and

3 “(B) do not include—

4 “(i) detailed design information; or

5 “(ii) cost or price information.

6 “(2) The agency head evaluates the proposals on
7 the basis of evaluation criteria set forth in the solici-
8 tation, except that the agency head does not consider
9 cost-related or price-related evaluation factors.

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

15 “(4) The agency head awards the contract in ac-
16 cordance with section 303B(d).

17 “(c) RESOURCE COMPARISON CRITERION RE-
18 QUIRED.—In using two-phase selection procedures for enter-
19 ing into a contract, the agency head shall establish a re-
20 source criterion or a financial criterion applicable to the
21 contract in order to provide a consistent basis for compar-
22 ing the offerors and their proposals.

23 “(d) TWO-PHASE SELECTION PROCEDURES DE-
24 FINED.—In this section, the term ‘two-phase selection proce-
25 dures’ means procedures described in subsection (b) that are

1 *used for the selection of a contractor on the basis of cost*
 2 *or price and other evaluation criteria to provide property*
 3 *or services in accordance with the provisions of a contract*
 4 *which requires the contractor to design the property to be*
 5 *acquired under the contract and produce or construct such*
 6 *property.”.*

7 (b) *CLERICAL AMENDMENT.—The table of contents in*
 8 *the first section of such Act, as amended by section 1054,*
 9 *is further amended by inserting after the item relating to*
 10 *section 303H the following new item:*

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

11 ***Subpart C—Kinds of Contracts***

12 ***SEC. 1071. AGENCY HEAD DETERMINATION REGARDING USE***
 13 ***OF COST TYPE OR INCENTIVE CONTRACT.***

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

17 ***SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.***

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

22 *“MULTIYEAR CONTRACTS*

23 *“SEC. 303J. (a) AUTHORITY.—The head of an execu-*
 24 *tive agency may enter into a multiyear contract for the ac-*
 25 *quisition of property or services if—*

1 “(1) funds are available and obligated for such
2 contract, for the full period of the contract or for the
3 first fiscal year in which the contract is in effect, and
4 for the estimated costs associated with any necessary
5 termination of such contract; and

6 “(2) the agency head determines that—

7 “(A) the need for the property or services is
8 reasonably firm and continuing over the period
9 of the contract; and

10 “(B) a multiyear contract will serve the best
11 interests of the United States by encouraging ef-
12 fective competition or promoting economy in ad-
13 ministration, performance, and operation of the
14 agency’s programs.

15 “(b) *TERMINATION CLAUSE.*—A multiyear contract
16 entered into under the authority of this section shall include
17 a clause that provides that the contract shall be terminated
18 if funds are not made available for the continuation of such
19 contract in any fiscal year covered by the contract.
20 Amounts available for paying termination costs shall re-
21 main available for such purpose until the costs associated
22 with termination of the contract are paid.

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

1 *for periods after the end of the fiscal year in which the per-*
2 *formance of the contract begins subject to the availability*
3 *of appropriations.”.*

4 (b) *CLERICAL AMENDMENT.*—*The table of contents in*
5 *the first section of such Act, as amended by section 1072,*
6 *is further amended by inserting after the item relating to*
7 *section 303J the following new item:*

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

8 ***SEC. 1074. ECONOMY ACT PURCHASES.***

9 (a) *REGULATIONS REQUIRED.*—*Not later than six*
10 *months after the date of the enactment of this Act, the Fed-*
11 *eral Acquisition Regulation shall be revised to include regu-*
12 *lations governing the exercise of the authority under section*
13 *1535 of title 31, United States Code, for Federal agencies*
14 *to purchase goods and services under contracts entered into*
15 *or administered by other agencies.*

16 (b) *CONTENT OF REGULATIONS.*—*The regulations pre-*
17 *scribed pursuant to subsection (a) shall—*

18 (1) *require that each purchase described in sub-*
19 *section (a) be approved in advance by a contracting*
20 *officer of the ordering agency with authority to con-*
21 *tract for the goods or services to be purchased or by*
22 *another official in a position specifically designated*
23 *by regulation to approve such purchase;*

24 (2) *provide that such a purchase of goods or*
25 *services may be made only if—*

1 (A) the purchase is appropriately made
2 under a contract that the agency filling the pur-
3 chase order entered into, before the purchase
4 order, in order to meet the requirements of such
5 agency for the same or similar goods or services;

6 (B) the agency filling the purchase order is
7 better qualified to enter into or administer the
8 contract for such goods or services by reason of
9 capabilities or expertise that is not available
10 within the ordering agency; or

11 (C) the agency or unit filling the order is
12 specifically authorized by law or regulations to
13 purchase such goods or services on behalf of other
14 agencies;

15 (3) prohibit any such purchase under a contract
16 or other agreement entered into or administered by an
17 agency not covered by the provisions of chapter 137
18 of title 10, United States Code, or title III of the Fed-
19 eral Property and Administrative Services Act of
20 1949 (41 U.S.C. 251 et seq.) and not covered by the
21 Federal Acquisition Regulation unless the purchase is
22 approved in advance by the senior procurement offi-
23 cial responsible for purchasing by the ordering agen-
24 cy; and

1 (4) *prohibit any payment to the agency filling a*
2 *purchase order of any fee that exceeds the actual cost*
3 *or, if the actual cost is not known, the estimated cost*
4 *of entering into and administering the contract or*
5 *other agreement under which the order is filled.*

6 (c) *MONITORING SYSTEM REQUIRED.—The Adminis-*
7 *trator for Federal Procurement Policy shall ensure that, not*
8 *later than one year after the date of the enactment of this*
9 *Act, systems for collecting and evaluating procurement data*
10 *are capable of collecting and evaluating appropriate data*
11 *on procurements conducted under the regulations prescribed*
12 *pursuant to subsection (a).*

13 (d) *TERMINATION.—This section shall cease to be effec-*
14 *tive one year after the date on which final regulations pre-*
15 *scribed pursuant to subsection (a) take effect.*

16 **PART III—ACQUISITIONS GENERALLY**

17 **SEC. 1091. POLICY REGARDING CONSIDERATION OF CON-**
18 **TRACTOR PAST PERFORMANCE.**

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

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

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

1 (3) by adding at the end the following new para-
2 graph:

3 “(14) establishing policies and procedures that
4 encourage the consideration of contractors’ past per-
5 formance in the selection of contractors.”.

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

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

10 “(A) Past contract performance of an offeror is
11 one of the relevant factors that contracting officials of
12 executive agencies should consider in entering into
13 contracts.

14 “(B) It is appropriate for a contracting official
15 to consider past contract performance of an offeror as
16 an indicator of the likelihood that the offeror will suc-
17 cessfully perform a contract to be entered into by that
18 official.

19 “(2) The Administrator shall prescribe for executive
20 agencies guidance regarding consideration of the past con-
21 tract performance of offerors in awarding contracts. The
22 guidance shall include—

23 “(A) standards for evaluating past performance
24 with respect to cost (when appropriate), schedule,
25 compliance with technical or functional specifica-

1 *tions, and other relevant performance factors that fa-*
2 *facilitate consistent and fair evaluation by all executive*
3 *agencies;*

4 *“(B) policies for the collection and maintenance*
5 *of information on past contract performance that, to*
6 *the maximum extent practicable, facilitate automated*
7 *collection, maintenance, and dissemination of infor-*
8 *mation and provide for ease of collection, mainte-*
9 *nance, and dissemination of information by other*
10 *methods, as necessary; and*

11 *“(C) policies for ensuring that offerors are af-*
12 *forded an opportunity to submit information on past*
13 *contract performance and that information submitted*
14 *by offerors is considered.*

15 *“(3) The Administrator shall prescribe for all executive*
16 *agencies the policy regarding the period for which informa-*
17 *tion on past performance of offerors may be maintained*
18 *and considered.*

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

1 **SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL REPORT**
2 **ON COMPETITION.**

3 *Section 23 of the Office of Federal Procurement Policy*
4 *Act (41 U.S.C. 419) is repealed.*

5 **Subtitle B—Truth in Negotiations**

6 **PART I—ARMED SERVICES ACQUISITIONS**

7 **SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-**
8 **PLICABILITY.**

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

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

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

16 *(b) ADJUSTMENTS FOR CHANGES IN DOLLAR VAL-*
17 *UES.—Section 2306a(a) of such title is amended by adding*
18 *at the end the following new subparagraph:*

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

1 *evenly divisible by \$50,000, the amount shall be rounded*
2 *to the next higher multiple of \$50,000.”.*

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

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

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

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

13 *“(i) adequate price competition;*

14 *“(ii) established catalog or market prices of*
15 *commercial items or of services customarily used*
16 *for other than Government purposes, as the case*
17 *may be, that are sold in substantial quantities to*
18 *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 *agency concerned determines that the requirements of*
22 *this section may be waived and states in writing the*
23 *reasons for such determination.*

1 “(2) *Submission of cost and pricing data shall not be*
2 *required under subsection (a) in the case of a modification*
3 *of a contract or subcontract for a commercial item if—*

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

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

12 “(C) *the modification would not change the con-*
13 *tract or subcontract, as the case may be, from a con-*
14 *tract or subcontract for the acquisition of a commer-*
15 *cial item to a contract or subcontract for the acquisi-*
16 *tion of a noncommercial item.”.*

17 **(b) CONFORMING AMENDMENT TO REFERENCE.**—Sub-
18 *section (a)(5) of such section is amended by striking out*
19 *“subsection (b)(2)” and inserting in lieu thereof “subsection*
20 *(b)(1)(B)”.*

21 **SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUB-**
22 **MISSION NOT OTHERWISE REQUIRED.**

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

1 “(c) *LIMITATION ON AUTHORITY TO REQUIRE COST*
2 *OR PRICING DATA.*—When cost or pricing data are not re-
3 quired to be submitted under this section by reason of a
4 \$500,000 threshold set forth in subsection (a) (as adjusted
5 pursuant to paragraph (7) of such subsection) or by reason
6 of an exception set forth in paragraph (1)(A) or (2) of sub-
7 section (b), submission of such data may not be required
8 unless the head of an agency concerned determines that such
9 data are necessary for the evaluation by the agency of the
10 reasonableness of the price of the contract or subcontract
11 to which the data relate. In any case in which the head
12 of an agency requires such data to be submitted in accord-
13 ance with the preceding sentence, the agency head shall doc-
14 ument in writing the reasons for such requirement.”.

15 **SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**
16 **ITEMS.**

17 Section 2306a of title 10, United States Code, is
18 amended—

19 (1) by redesignating subsections (d), (e), (f), and
20 (g) as subsections (e), (f), (g), and (i), respectively;
21 and

22 (2) by inserting after subsection (c) the following
23 new subsection (d):

24 “(d) *ADDITIONAL EXCEPTION PROVISIONS REGARDING*
25 *COMMERCIAL ITEMS.*—(1) To the maximum extent prac-

1 *ticable, the head of an agency shall conduct procurements*
2 *of commercial items on a competitive basis.*

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

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

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

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

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

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

16 **SEC. 1206. REQUIRED REGULATIONS.**

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

21 “(h) *REQUIRED REGULATIONS.*—The Secretary shall
22 prescribe regulations concerning the types of information
23 that offerors must submit for a contracting officer to con-
24 sider in determining whether the price of a procurement
25 to the Government is fair and reasonable when certified cost

1 *or pricing data are not required to be submitted under this*
2 *section because the price of the procurement to the United*
3 *States is not expected to exceed an applicable \$500,000*
4 *threshold set forth in subsection (a) (as adjusted pursuant*
5 *to paragraph (7) of such subsection). Such information, at*
6 *a minimum, shall include appropriate information on the*
7 *prices at which such offeror has previously sold the same*
8 *or similar products.”.*

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

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

12 *(1) in subparagraphs (A)(ii) and (B)(ii) of sub-*
13 *section (e)(4), by inserting “or, if applicable consist-*
14 *ent with paragraph (1)(B), another date agreed upon*
15 *between the parties,” after “(or price of the modifica-*
16 *tion)”;* and

17 *(2) in subsection (i), by inserting “or, if applica-*
18 *ble consistent with subsection (d)(1)(B), another date*
19 *agreed upon between the parties” after “(or the price*
20 *of a contract modification)”.*

21 **SEC. 1208. EXCEPTION FOR TRANSFERS BETWEEN DIVI-**
22 **SIONS, SUBSIDIARIES, AND AFFILIATES.**

23 *Subsection (i) of section 2306a of title 10, United*
24 *States Code, as redesignated by section 1204(1), is amended*
25 *to read as follows:*

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

2 “(1) *The term ‘cost or pricing data’ means all*
3 *facts that, as of the date of agreement on the price of*
4 *a contract (or the price of a contract modification),*
5 *a prudent buyer or seller would reasonably expect to*
6 *affect price negotiations significantly. Such term does*
7 *not include information that is judgmental, but does*
8 *include the factual information from which a judg-*
9 *ment was derived.*

10 “(2) *The term ‘subcontract’ includes a transfer of*
11 *commercial items between divisions, subsidiaries, or*
12 *affiliates of a contractor.’.*”

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

14 *Subsections (b) and (c) of section 803 of Public Law*
15 *101–510 (10 U.S.C. 2306a note) are repealed.*

16 ***PART II—CIVILIAN AGENCY ACQUISITIONS***

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

18 ***ENSURE UNIFORM TREATMENT OF COST OR***

19 ***PRICING DATA.***

20 *(a) IN GENERAL.*—*Title III of the Federal Property*
21 *and Administrative Services Act of 1949 (41 U.S.C. 251*
22 *et seq.) is amended—*

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

24 *and*

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

3 “COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

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

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

12 “(i) in the case of a prime contract entered
13 into after the date of the enactment of the Fed-
14 eral Acquisition Streamlining Act of 1994, the
15 price of the contract to the United States is ex-
16 pected to exceed \$500,000; and

17 “(ii) in the case of a prime contract entered
18 into on or before the date of the enactment of the
19 Federal Acquisition Streamlining Act of 1994,
20 the price of the contract to the United States is
21 expected to exceed \$100,000.

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

1 “(i) in the case of a change or modification
2 made to a prime contract referred to in subpara-
3 graph (A)(i), the price adjustment is expected to
4 exceed \$500,000;

5 “(ii) in the case of a change or modification
6 made to a prime contract that was entered into
7 on or before the date of the enactment of the Fed-
8 eral Acquisition Streamlining Act of 1994, and
9 that has been modified pursuant to paragraph
10 (6), the price adjustment is expected to exceed
11 \$500,000; and

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

15 “(C) An offeror for a subcontract (at any tier)
16 of a contract under this title shall be required to sub-
17 mit cost or pricing data before the award of the sub-
18 contract if the prime contractor and each higher-tier
19 subcontractor have been required to make available
20 cost or pricing data under this section and—

21 “(i) in the case of a subcontract under a
22 prime contract referred to in subparagraph
23 (A)(i), the price of the subcontract is expected to
24 exceed \$500,000;

1 “(ii) in the case of a subcontract entered
2 into under a prime contract that was entered
3 into on or before the date of the enactment of the
4 Federal Acquisition Streamlining Act of 1994,
5 and that has been modified pursuant to para-
6 graph (6), the price of the subcontract is expected
7 to exceed \$500,000; and

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

11 “(D) The subcontractor for a subcontract covered
12 by subparagraph (C) shall be required to submit cost
13 or pricing data before the pricing of a change or
14 modification to the subcontract if—

15 “(i) in the case of a change or modification
16 to a subcontract referred to in subparagraph
17 (C)(i) or (C)(ii), the price adjustment is expected
18 to exceed \$500,000; and

19 “(ii) in the case of a change or modification
20 to a subcontract referred to in subparagraph
21 (C)(iii), the price adjustment is expected to ex-
22 ceed \$100,000.

23 “(2) A person required, as an offeror, contractor, or
24 subcontractor, to submit cost or pricing data under para-
25 graph (1) (or required by the agency head concerned to sub-

1 *mit such data in accordance with subsection (c)) shall be*
2 *required to certify that, to the best of the person's knowledge*
3 *and belief, the cost or pricing data submitted are accurate,*
4 *complete, and current.*

5 “(3) *Cost or pricing data required to be submitted*
6 *under paragraph (1) (or in accordance with subsection (c)),*
7 *and a certification required to be submitted under para-*
8 *graph (2), shall be submitted—*

9 “(A) *in the case of a submission by a prime con-*
10 *tractor (or an offeror for a prime contract), to the*
11 *contracting officer for the contract (or to a designated*
12 *representative of the contracting officer); or*

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

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

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

23 “(6)(A) *Upon the request of a contractor that was re-*
24 *quired to submit cost or pricing data under paragraph (1)*
25 *in connection with a prime contract entered into on or be-*

1 fore the date of the enactment of the Federal Acquisition
2 Streamlining Act of 1994, the agency head that entered into
3 such contract shall modify the contract to reflect subpara-
4 graphs (B)(ii) and (C)(ii) of paragraph (1). All such modi-
5 fications shall be made without requiring consideration.

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

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

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

22 “(A) in the case of a contract, a subcontract, or
23 a contract or subcontract modification, for which the
24 price agreed upon is based on—

25 “(i) adequate price competition;

1 “(ii) established catalog or market prices of
2 commercial items or of services customarily used
3 for other than Government purposes, as the case
4 may be, that are sold in substantial quantities to
5 the general public; or

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

7 “(B) in an exceptional case when the agency
8 head concerned determines that the requirements of
9 this section may be waived and states in writing the
10 reasons for such determination.

11 “(2) Submission of cost and pricing data shall not be
12 required under subsection (a) in the case of a modification
13 of a contract or subcontract for a commercial item if—

14 “(A) the contract or subcontract being modified
15 is a contract or subcontract for which submission of
16 cost and pricing data may not be required by reason
17 of paragraph (1)(A);

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

21 “(C) the modification would not change the con-
22 tract or subcontract, as the case may be, from a con-
23 tract or subcontract for the acquisition of a commer-
24 cial item to a contract or subcontract for the acquisi-
25 tion of a noncommercial item.

1 “(c) *LIMITATION ON AUTHORITY TO REQUIRE COST*
2 *OR PRICING DATA.*—When cost or pricing data are not re-
3 quired to be submitted under this section by reason of a
4 \$500,000 threshold set forth in subsection (a) (as adjusted
5 pursuant to paragraph (7) of such subsection) or by reason
6 of an exception in paragraph (1)(A) or (2) of subsection
7 (b), submission of such data may not be required unless
8 the agency head concerned determines that such data are
9 necessary for the evaluation by the agency of the reasonable-
10 ness of the price of the contract or subcontract to which the
11 data relate. In any case in which the agency head requires
12 such data to be submitted in accordance with the preceding
13 sentence, the agency head shall document in writing the rea-
14 sons for such requirement.

15 “(d) *ADDITIONAL EXCEPTION PROVISIONS REGARDING*
16 *COMMERCIAL ITEMS.*—(1) To the maximum extent prac-
17 ticable, an agency head shall conduct procurements of com-
18 mercial items on a competitive basis.

19 “(2) In any case in which it is not practicable to con-
20 duct a procurement of a commercial item on a competitive
21 basis and the procurement is not covered by an exception
22 in subsection (b), the contracting officer shall nonetheless
23 exempt a contract, subcontract, or modification of a con-
24 tract or subcontract under the procurement from the re-
25 quirements of subsection (a) if the contracting officer devel-

1 *ops or obtains from the offeror or contractor, or from an-*
2 *other source or sources, in accordance with standards and*
3 *procedures set forth in the Federal Acquisition Regulation,*
4 *information on prices at which the same or similar items*
5 *have been sold in the commercial market that is adequate*
6 *for evaluating the reasonableness of the price of the contract*
7 *or subcontract for a commercial item, or the contract or*
8 *subcontract modification, as the case may be.*

9 “(3)(A) *In accordance with procedures prescribed in*
10 *the Federal Acquisition Regulation, an agency head shall*
11 *have the right to examine all information provided by an*
12 *offeror, contractor, or subcontractor pursuant to paragraph*
13 *(2) and all books and records of such offeror, contractor,*
14 *or subcontractor that directly relate to such information in*
15 *order to determine whether the agency is receiving accurate*
16 *information required under this section.*

17 “(B) *The right under subparagraph (A) shall expire*
18 *3 years after the date of award of the contract, or 3 years*
19 *after the date of the modification of the contract, with re-*
20 *spect to which the information was provided.*

21 “(e) *PRICE REDUCTIONS FOR DEFECTIVE COST OR*
22 *PRICING DATA.—(1)(A) A prime contract (or change or*
23 *modification to a prime contract) under which a certificate*
24 *under subsection (a)(2) is required shall contain a provi-*
25 *sion that the price of the contract to the United States, in-*

1 *cluding profit or fee, shall be adjusted to exclude any sig-*
2 *nificant amount by which it may be determined by the*
3 *agency head that such price was increased because the con-*
4 *tractor (or any subcontractor required to make available*
5 *such a certificate) submitted defective cost or pricing data.*

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

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

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

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

6 “(i) was the sole source of the property or
7 services procured; or

8 “(ii) otherwise was in a superior bargain-
9 ing position with respect to the property or serv-
10 ices procured;

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

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

21 “(D) the prime contractor or subcontractor did
22 not submit a certification of cost and pricing data re-
23 lating to the contract as required under subsection
24 (a)(2).

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

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

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

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

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

22 “(ii) the United States proves that, had the cost
23 or pricing data referred to in subparagraph (A)(ii)
24 been submitted to the United States before the date of
25 agreement on the price of the contract (or price of the

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

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

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

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

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

23 “(B) *if the submission of such defective data was*
24 *a knowing submission, for an additional amount*
25 *equal to the amount of the overpayment.*

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

6 “(g) *RIGHT OF UNITED STATES TO EXAMINE CON-*
7 *TRACTOR RECORDS.*—For the purpose of evaluating the ac-
8 curacy, completeness, and currency of cost or pricing data
9 required to be submitted by this section, the head of an
10 agency shall have the rights provided by section 304B(a)(2).

11 “(h) *REQUIRED REGULATIONS.*—The Federal Acquisi-
12 tion Regulation shall include regulations concerning the
13 types of information that offerors must submit for a con-
14 tracting officer to consider in determining whether the price
15 of a procurement to the Government is fair and reasonable
16 when certified cost or pricing data are not required to be
17 submitted under this section because the price of the pro-
18 curement to the United States is not expected to exceed an
19 applicable \$500,000 threshold set forth in subsection (a) (as
20 adjusted pursuant to paragraph (7) of such subsection).
21 Such information, at a minimum, shall include appro-
22 priate information on the prices at which such offeror has
23 previously sold the same or similar products.

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

1 “(1) The term ‘cost or pricing data’ means all
2 facts that, as of the date of agreement on the price of
3 a contract (or the price of a contract modification) or,
4 if applicable consistent with subsection (e)(1)(B), an-
5 other date agreed upon between the parties, a prudent
6 buyer or seller would reasonably expect to affect price
7 negotiations significantly. Such term does not include
8 information that is judgmental, but does include the
9 factual information from which a judgment was de-
10 rived.

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

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

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

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

18 (a) *REPEAL.*—Section 303E of the Federal Property
19 and Administrative Services Act of 1949 (41 U.S.C. 253e)
20 is repealed.

21 (b) *CLERICAL AMENDMENT.*—The table of contents in
22 the first section of such Act is amended by striking out the
23 item relating to section 303E.

1 **Subtitle C—Research and**
2 **Development**

3 **SEC. 1301. RESEARCH PROJECTS.**

4 (a) *AUTHORIZED MEANS.*—Subsection (b) of section
5 2358 of title 10, United States Code, is amended to read
6 as follows:

7 “(b) *AUTHORIZED MEANS.*—The Secretary of Defense
8 or the Secretary of a military department may perform re-
9 search and development projects—

10 “(1) by contract entered into with, grant made
11 to, or cooperative agreement entered into with edu-
12 cational or research institutions, private businesses,
13 or other persons in accordance with the provisions of
14 chapter 63 of title 31;

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

16 “(3) by using employees and consultants of the
17 Department of Defense; or

18 “(4) by mutual agreement with the head of any
19 other department or agency of the Federal Govern-
20 ment.”.

21 (b) *CAPTION AMENDMENT.*—The caption of subsection
22 (c) of such section is amended by striking out “MILITARY”
23 and inserting in lieu thereof “DEPARTMENT OF DEFENSE”.

24 (c) *ADVANCED RESEARCH PROJECTS.*—

1 (1) *RESTORATION AND REVISION OF FORMER*
2 *STATEMENT OF AUTHORITY.*—Section 2371 of title 10,
3 *United States Code, is amended—*

4 (A) *by redesignating subsections (a), (b),*
5 *(c), (d), (e), and (f) as subsections (b), (c), (d),*
6 *(e), (f), and (g), respectively; and*

7 (B) *by inserting before subsection (b), as so*
8 *redesignated, the following new subsection (a):*

9 “(a) *The Secretary of Defense, acting through the Ad-*
10 *vanced Research Projects Agency and such other elements*
11 *of the Department of Defense as the Secretary may des-*
12 *ignate, and the Secretary of each military department, in*
13 *carrying out basic, applied, and advanced research projects,*
14 *may enter into other transactions, in addition to contracts,*
15 *grants, and cooperative agreements authorized by section*
16 *2358 of this title.”.*

17 (2) *CONFORMING AMENDMENTS.*—*Such section,*
18 *as amended by paragraph (1), is further amended—*

19 (A) *in subsection (b)—*

20 (i) *in paragraph (1), by inserting “or*
21 *subsection (a)” after “section 2358 of this*
22 *title”; and*

23 (ii) *in paragraph (2), by striking out*
24 *“subsection (d)” and inserting in lieu there-*
25 *of “subsection (e)”;*

1 (B) in subsection (c), by inserting “section
2 2358 of this title or” after “under”;

3 (C) in subsection (d)—

4 (i) in paragraph (1), by striking out
5 “this section” and inserting in lieu thereof
6 “section 2358 of this title or subsection (a)”;

7 and

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

11 (D) in subsection (e), by inserting “or sub-
12 section (a)” in the first sentence after “section
13 2358 of this title”; and

14 (E) in subsection (f)—

15 (i) in the first sentence, by striking out
16 “under this section” and inserting in lieu
17 thereof “under section 2358 of this title or
18 subsection (a)”;

19 (ii) in paragraph (4), by striking out
20 “subsection (a)” and inserting in lieu there-
21 of “subsection (b)”;

22 (iii) in paragraph (5), by striking out
23 “subsection (d)” and inserting in lieu there-
24 of “subsection (e)”.

1 **SEC. 1302. ELIMINATION OF INFLEXIBLE TERMINOLOGY RE-**
 2 **GARDING COORDINATION AND COMMUNICA-**
 3 **TION OF DEFENSE RESEARCH ACTIVITIES.**

4 *Section 2364 of title 10, United States Code, is amend-*
 5 *ed—*

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

10 *(2) in subsection (c), by striking out paragraphs*
 11 *(2), (3), and (4) and inserting in lieu thereof the fol-*
 12 *lowing:*

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

17 **Subtitle D—Procurement Protests**

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

19 **GENERAL**

20 **SEC. 1401. PROTEST DEFINED.**

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

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

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

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

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

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

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

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

18 (1) in subsection (b)—

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

22 (B) in paragraph (2)—

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

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

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

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

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

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

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

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

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

1 “(i) the contracting officer may not authorize
2 performance of the contract to begin while the protest
3 is pending; or

4 “(ii) if contract performance authorization to
5 proceed was not withheld in accordance with para-
6 graph (2) before receipt of the notice, the contracting
7 officer shall immediately direct the contractor to cease
8 performance under the contract and to suspend any
9 related activities that may result in additional obli-
10 gations being incurred by the United States under
11 that contract.

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

15 “(C) The head of the procuring activity may authorize
16 the performance of the contract (notwithstanding a protest
17 of which the Federal agency has notice under this section)—

18 “(i) upon a written finding that—

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

21 “(II) urgent and compelling circumstances
22 that significantly affect interests of the United
23 States will not permit waiting for the decision of
24 the Comptroller General concerning the protest;
25 and

1 “(ii) after the Comptroller General is notified of
2 that finding.

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

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

9 “(B) the date that is 5 days after—

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

13 “(ii) in the case of a contract for which no
14 debriefing is required, the date on which the un-
15 successful offeror receives the notification of con-
16 tract award.”.

17 **SEC. 1403. DECISIONS ON PROTESTS.**

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

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

23 (2) in paragraph (2), by striking out “45 cal-
24 endar days from” and inserting “65 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 made, should be resolved, to the
7 maximum extent practicable, within the time limit estab-
8 lished under paragraph (1) of this subsection for final deci-
9 sion 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
16 amended—

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

19 “(3) If the Federal agency fails to implement fully the
20 recommendations of the Comptroller General under this
21 subsection with respect to a solicitation for a contract or
22 an award or proposed award of a contract within 60 days
23 after receiving the recommendations, the head of the procur-
24 ing activity responsible for that contract shall report such

1 *failure to the Comptroller General not later than 5 working*
2 *days after the end of such 60-day period.”;*

3 *(B) by striking out subsection (c) and in-*
4 *serting in lieu thereof the following:*

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

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

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

15 *“(2) No party may be paid, pursuant to a rec-*
16 *ommendation made under the authority of paragraph (1)—*

17 *“(A) costs for consultant and expert witness fees*
18 *that exceed the rates provided under section*
19 *504(b)(1)(A) of title 5 for expert witnesses; or*

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

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 shall—*

1 “(A) pay the costs promptly; or

2 “(B) if the Federal agency does not make such
3 payment, promptly report to the Comptroller General
4 the reasons for the failure to follow the Comptroller
5 General’s recommendation.

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

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

17 “(e)(1) The Comptroller General shall report promptly
18 to the Committee on Governmental Affairs and the Commit-
19 tee on Appropriations of the Senate and to the Committee
20 on Government Operations and the Committee on Appro-
21 priations of the House of Representatives any case in which
22 a Federal agency fails to implement fully a recommenda-
23 tion of the Comptroller General under subsection (b) or (c).
24 The report shall include—

1 “(A) a comprehensive review of the pertinent
2 procurement, including the circumstances of the fail-
3 ure of the Federal agency to implement a rec-
4 ommendation of the Comptroller General; and

5 “(B) a recommendation regarding whether, in
6 order to correct an inequity or to preserve the integ-
7 rity of the procurement process, the Congress should
8 consider—

9 “(i) private relief legislation;

10 “(ii) legislative rescission or cancellation of
11 funds;

12 “(iii) further investigation by Congress; or

13 “(iv) other action.

14 “(2) Not later than January 31 of each year, the
15 Comptroller General shall transmit to the Congress a report
16 containing a summary of each instance in which a Federal
17 agency did not fully implement a recommendation of the
18 Comptroller General under subsection (b) or (c) during the
19 preceding year. The report shall also describe each instance
20 in which a final decision in a protest was not rendered
21 within 125 days after the date the protest is submitted to
22 the Comptroller General.”.

23 (2) REQUIREMENT FOR PAYMENT IN ACCORD-
24 ANCE WITH PRIOR GAO DETERMINATIONS.—Costs to
25 which the Comptroller General declared an interested

1 *party to be entitled under section 3554 of title 31,*
2 *United States Code, as in effect immediately before*
3 *the enactment of this Act, shall, if not paid or other-*
4 *wise satisfied by the Federal agency concerned before*
5 *the date of the enactment of this Act, be paid prompt-*
6 *ly.*

7 **SEC. 1404. REGULATIONS.**

8 *(a) COMPUTATION OF PERIODS.—Section 3555 of title*
9 *31, United States Code, is amended—*

10 *(1) by redesignating subsection (b) as subsection*
11 *(d); and*

12 *(2) by inserting after subsection (a) the following*
13 *new subsection (b):*

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

16 *“(1) the day of the act, event, or default from*
17 *which the designated period of time begins to run not*
18 *be included; and*

19 *“(2) the last day after such act, event, or default*
20 *be included, unless—*

21 *“(A) such last day is a Saturday, a Sun-*
22 *day, or a legal holiday; or*

23 *“(B) in the case of a filing of a paper at*
24 *the General Accounting Office or a Federal agen-*
25 *cy, such last day is a day on which weather or*

1 *other conditions cause the closing of the General*
2 *Accounting Office or Federal agency, in which*
3 *event the next day that is not a Saturday, Sun-*
4 *day, or legal holiday shall be included.”.*

5 **(b) ELECTRONIC FILINGS AND DISSEMINATIONS.**—
6 *Such section, as amended by subsection (a), is further*
7 *amended by inserting after subsection (b) the following new*
8 *subsection:*

9 *“(c) The Comptroller General may prescribe proce-*
10 *dures for the electronic filing and dissemination of docu-*
11 *ments and information required under this subchapter. In*
12 *prescribing such procedures, the Comptroller General shall*
13 *consider the ability of all parties to achieve electronic access*
14 *to such documents and records.”.*

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

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

19 **SEC. 1421. NONEXCLUSIVITY OF REMEDIES.**

20 *Section 3556 of title 31, United States Code, is amend-*
21 *ed by striking out “a district court of the United States*
22 *or the United States Claims Court” in the first sentence*
23 *and inserting in lieu thereof “the United States Court of*
24 *Federal Claims”.*

1 **SEC. 1422. JURISDICTION OF THE UNITED STATES COURT**
2 **OF FEDERAL CLAIMS.**

3 (a) *CLAIMS AGAINST THE UNITED STATES AND BID*
4 *PROTESTS.*—Section 1491 of title 28, United States Code,
5 *is amended—*

6 (1) *by redesignating subsection (b) as subsection*
7 *(e);*

8 (2) *in subsection (a)—*

9 (A) *by striking out “(a)(1)” and inserting*
10 *in lieu thereof “(a) CLAIMS AGAINST THE*
11 *UNITED STATES.—”;*

12 (B) *in paragraph (2), by striking out “(2)*
13 *To” and inserting in lieu thereof “(b) REMEDY*
14 *AND RELIEF.—To”;* and

15 (C) *by striking out paragraph (3); and*

16 (3) *by inserting after subsection (b), as des-*
17 *ignated by paragraph (2)(B), the following new sub-*
18 *section (c):*

19 “(c) *BID PROTESTS.*—(1) *The United States Court of*
20 *Federal Claims has jurisdiction to render judgment on an*
21 *action by an interested party objecting to a solicitation by*
22 *a Federal agency for bids or proposals for a proposed con-*
23 *tract or to a proposed award or the award of a contract.*
24 *The court has jurisdiction to entertain such an action with-*
25 *out regard to whether suit is instituted before or after the*
26 *contract is awarded.*

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

4 “(3) In exercising jurisdiction under this subsection,
5 the court shall give due regard to the interests of national
6 defense and national security and the need for expeditious
7 resolution of the action.

8 “(4) The district courts of the United States do not
9 have jurisdiction of any action referred to in paragraph
10 (1).”.

11 (b) CLERICAL AMENDMENTS.—

12 (1) SECTION HEADING.—The heading of such sec-
13 tion is amended by inserting “**BID PROTESTS;**”
14 after “**GENERALLY;**”.

15 (2) TABLE OF SECTIONS.—The table of sections
16 at the beginning of chapter 91 of title 28, United
17 States Code, is amended by striking out the item re-
18 lating to section 1491 and inserting in lieu thereof the
19 following:

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

1 **PART III—PROTESTS IN PROCUREMENTS OF**

2 **AUTOMATIC DATA PROCESSING**

3 **SEC. 1431. REVOCATION OF DELEGATIONS OF PROCURE-**
4 **MENT AUTHORITY.**

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

14 **SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMIN-**
15 **ISTRATION BOARD OF CONTRACT APPEALS.**

16 *The first sentence of section 111(f)(1) of the Federal*
17 *Property and Administrative Services Act of 1949 (40*
18 *U.S.C. 759(f)(1)) is amended to read as follows: “Upon re-*
19 *quest of an interested party in connection with any pro-*
20 *curement that is subject to this section (including any such*
21 *procurement that is subject to delegation of procurement au-*
22 *thority), the board of contract appeals of the General Serv-*
23 *ices Administration (hereafter in this subsection referred to*
24 *as the ‘board’) shall review, as provided in this subsection,*
25 *any decision by a contracting officer that is alleged to vio-*

1 *late a statute, a regulation, or the conditions of a delegation*
2 *of procurement authority.”.*

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

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

7 (1) *in paragraph (2) by adding at the end the*
8 *following new subparagraph:*

9 “(C) *If, in the case of a preaward protest, the board*
10 *suspends the procurement authority of the Administrator*
11 *or the Administrator’s delegation of procurement authority,*
12 *the Administrator or the delegate, as the case may be, may*
13 *continue with the procurement action up to, but not includ-*
14 *ing, the awarding of the contract if the Administrator or*
15 *the delegate, as the case may be, determines that it is in*
16 *the best interests of the United States to do so.”; and*

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

19 “(A)(i) *If, with respect to an award of a contract, the*
20 *board receives notice of a protest under this subsection with-*
21 *in the period described in clause (ii), the board shall, at*
22 *the request of an interested party, hold a hearing to deter-*
23 *mine whether the board should suspend the procurement au-*
24 *thority of the Administrator or the Administrator’s delega-*

1 *tion of procurement authority for the protested procurement*
2 *on an interim basis until the board can decide the protest.*

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

7 *“(I) the debriefing date offered to an unsuccessful*
8 *offeror for any debriefing that is requested and, when*
9 *requested, is required; or*

10 *“(II) in the case of a contract for which no de-*
11 *briefing is required, the date on which the unsuccess-*
12 *ful offeror receives the notification of contract award.*

13 *“(iii) The board shall hold the requested hearing with-*
14 *in 5 days after the date of the filing of the protest or, in*
15 *the case of a request for debriefing under the provisions of*
16 *section 2305(b)(5) of title 10, United States Code, or section*
17 *303B(e) of this Act, within 5 days after the later of the*
18 *date of the filing of the protest or the date of the debrief-*
19 *ing.”.*

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

22 *(1) by striking out “45 working days” and in-*
23 *serting in lieu thereof “65 days”; and*

24 *(2) by adding at the end the following: “An*
25 *amendment which adds a new ground of protest*

1 *should be resolved, to the maximum extent prac-*
2 *ticable, within the time limits established for resolu-*
3 *tion of the initial protest.”.*

4 **SEC. 1434. DISMISSALS OF PROTESTS.**

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

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

11 “(i) *is frivolous;*

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

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

15 **SEC. 1435. AWARD OF COSTS.**

16 *Section 111(f)(5) is amended by striking out subpara-*
17 *graph (C) and inserting in lieu thereof the following:*

18 “(C) *Whenever the board makes such a determination,*
19 *it may, in accordance with section 1304 of title 31, United*
20 *States Code, further declare an appropriate prevailing*
21 *party to be entitled to the cost of filing and pursuing the*
22 *protest (including reasonable attorney’s fees and consultant*
23 *and expert witness fees), and bid and proposal preparation.*
24 *However, no party may be declared entitled to costs for con-*
25 *sultant and expert witness fees that exceed the rates pro-*

1 *vided under section 504(b)(1)(A) of title 5, United States*
2 *Code, for expert witnesses or to costs for attorney's fees that*
3 *exceed the rates provided for attorneys under section*
4 *504(b)(1)(A) of title 5, United States Code."*

5 **SEC. 1436. DISMISSAL AGREEMENTS.**

6 *Section 111(f)(5) of the Federal Property and Admin-*
7 *istrative Services Act of 1949 (40 U.S.C. 759(f)(5)) is*
8 *amended by adding at the end the following new subpara-*
9 *graphs:*

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

24 *"(E) Payment of amounts due from an agency under*
25 *subparagraph (C) or under the terms of a settlement agree-*

1 *ment under subparagraph (D) shall be made from the ap-*
2 *propriation made by section 1304 of title 31, United States*
3 *Code, for the payment of judgments. The Federal agency*
4 *concerned shall reimburse that appropriation account out*
5 *of funds available for the procurement.”.*

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

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

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

12 *Section 111(f) of the Federal Property and Adminis-*
13 *trative Services Act of 1949 (40 U.S.C. 759(f)) is amended*
14 *by striking out paragraph (8) and inserting in lieu thereof*
15 *the following:*

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 cause the closing of
6 the board or Federal agency, 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.

14 “(D) The procedures shall provide that if the board
15 expressly finds that a protest or a portion of a protest is
16 frivolous or has not been brought or pursued in good faith,
17 or that any person has willfully abused the board’s process
18 during the course of a protest, the board may impose appro-
19 priate procedural sanctions, including dismissal of the pro-
20 test.”.

21 **SEC. 1439. DEFINITIONS.**

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

1 “(A) the term ‘protest’ means a written objection
2 by an interested party—

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

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

8 “(iii) to an award or proposed award of
9 such a contract; or

10 “(iv) to a termination or cancellation of an
11 award of such a contract, if the written objection
12 contains an allegation that the termination or
13 cancellation is based in whole or in part on im-
14 proprieties concerning the award of the con-
15 tract;”.

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

18 (1) by striking out “and” at the end of subpara-
19 graph (A);

20 (2) by striking out the period at the end of sub-
21 paragraph (B) and inserting in lieu thereof “; and”;
22 and

23 (3) by adding at the end the following new sub-
24 paragraph:

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 **Subtitle E—Definitions and Other** 9 **Matters**

10 **PART I—ARMED SERVICES ACQUISITIONS**

11 **SEC. 1501. DEFINITIONS.**

12 Section 2302 of title 10, United States Code, is amend-
13 ed—

14 (1) by striking out paragraphs (3), (4), (5), and
15 (7);

16 (2) by redesignating paragraph (6) as para-
17 graph (5); and

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

20 “(3) The terms ‘commercial item’, ‘full and open
21 competition’, ‘major system’, ‘nondevelopmental item’,
22 ‘procurement’, ‘procurement system’, ‘responsible
23 source’, ‘standards’, and ‘technical data’, have the
24 meanings given such terms in section 4 of the Office
25 of Federal Procurement Policy Act (41 U.S.C. 403).

1 “(4) The term ‘simplified acquisition threshold’
2 has the meaning given that term in section 4 of the
3 Office of Federal Procurement Policy Act (41 U.S.C.
4 403), except that, in the case of any contract to be
5 awarded and performed, or purchase to be made, out-
6 side the United States in support of a contingency
7 operation, the term means an amount equal to two
8 times the amount specified for that term in section 4
9 of such Act.”.

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

11 (a) *CONSOLIDATION OF DELEGATION AUTHORITY.*—
12 Section 2311 of title 10, United States Code, is amended
13 to read as follows:

14 **“§2311. Delegation**

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

19 “(b) *PROCUREMENTS FOR OR WITH OTHER AGEN-*
20 *CIES.*—Subject to subsection (a), to facilitate the procure-
21 ment of property and services covered by this chapter by
22 each agency named in section 2303 of this title for any other
23 agency, and to facilitate joint procurement by those agen-
24 cies—

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

4 “(2) the heads of two or more agencies may by
5 agreement delegate procurement functions and assign
6 procurement responsibilities from one agency to an-
7 other of those agencies or to an officer or civilian em-
8 ployee of another of those agencies; and

9 “(3) the heads of two or more agencies may cre-
10 ate joint or combined offices to exercise procurement
11 functions and responsibilities.

12 “(c) APPROVAL OF TERMINATIONS AND REDUCTIONS
13 OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of
14 Defense shall prescribe regulations that prohibit each mili-
15 tary department participating in a joint acquisition pro-
16 gram approved by the Under Secretary of Defense for Ac-
17 quisition and Technology from terminating or substantially
18 reducing its participation in such program without the ap-
19 proval of the Under Secretary.

20 “(2) The regulations shall include the following provi-
21 sions:

22 “(A) A requirement that, before any such termi-
23 nation or substantial reduction in participation is
24 approved, the proposed termination or reduction be

1 *reviewed by the Joint Requirements Oversight Council*
2 *of the Department of Defense.*

3 “(B) A provision that authorizes the Under Sec-
4 *retary of Defense for Acquisition and Technology to*
5 *require a military department approved for termi-*
6 *nation or substantial reduction in participation in a*
7 *joint acquisition program to continue to provide some*
8 *or all of the funding necessary for the acquisition pro-*
9 *gram to be continued in an efficient manner.”.*

10 *(b) CONFORMING REPEAL.—(1) Section 2308 of title*
11 *10, United States Code, is repealed.*

12 *(2) The table of sections at the beginning of chapter*
13 *137 of such title is amended by striking out the item related*
14 *to section 2308.*

15 **SEC. 1503. DETERMINATIONS AND DECISIONS.**

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

18 **“§ 2310. Determinations and decisions**

19 *“(a) INDIVIDUAL OR CLASS DETERMINATIONS AND*
20 *DECISIONS AUTHORIZED.—Determinations and decisions*
21 *required to be made under this chapter by the head of an*
22 *agency may be made for an individual purchase or contract*
23 *or for a class of purchases or contracts. Such determinations*
24 *and decisions are final.*

1 “(b) *WRITTEN FINDINGS REQUIRED.*—(1) *Each deter-*
2 *mination or decision under section 2306(e)(1), 2307(e), or*
3 *2313(d)(2) of this title shall be based on a written finding*
4 *by the person making the determination or decision. The*
5 *finding shall set out facts and circumstances that support*
6 *the determination or decision.*

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

11 **SEC. 1504. UNDEFINITE CONTRACTUAL ACTIONS: RE-**
12 **STRICTIONS.**

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

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

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

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

21 (4) *in paragraph (3)—*

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

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

1 (b) *WAIVER AUTHORITY.*—Such subsection is amend-
2 *ed—*

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

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

7 “(4) *The head of an agency may waive the provisions*
8 *of this subsection with respect to a contract of that agency*
9 *if such head of an agency determines that the waiver is*
10 *necessary in order to support a contingency operation.”.*

11 (c) *INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS*
12 *WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.*—Sec-
13 *tion 2326(g)(1)(B) of title 10, United States Code, is*
14 *amended by striking out “small purchase threshold” and*
15 *inserting in lieu thereof “simplified acquisition threshold”.*

16 ***SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUC-***
17 ***TION SPECIAL TEST EQUIPMENT: CONTRACT***
18 ***TERMS AND CONDITIONS.***

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

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

1 **SEC. 1506. REGULATIONS FOR BIDS.**

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

6 *“(a) The Secretary of Defense or the Secretary of a*
7 *military department may—*

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

10 **PART II—CIVILIAN AGENCY ACQUISITIONS**

11 **SEC. 1551. DEFINITIONS.**

12 *Section 309(c) of the Federal Property and Adminis-*
13 *trative Services Act of 1949 (41 U.S.C. 259(c)) is amended*
14 *by striking out “and ‘supplies’” and inserting in lieu there-*
15 *of “‘supplies’, ‘commercial item’, ‘nondevelopmental item’,*
16 *and ‘simplified acquisition threshold’”.*

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

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

21 *(1) by redesignating sections 309 and 310 as sec-*
22 *tions 312 and 313, respectively; and*

23 *(2) by inserting after section 308 the following*
24 *new section 309:*

1 *items relating to sections 309 and 310 and inserting in lieu*
 2 *thereof the following:*

“Sec. 309. Delegation.

“Sec. 312. Definitions.

“Sec. 313. Statutes not applicable.”.

3 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

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

8 *“DETERMINATIONS AND DECISIONS*

9 *“SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINA-*
 10 *TIONS AND DECISIONS AUTHORIZED.—Determinations and*
 11 *decisions required to be made under this title by an agency*
 12 *head may be made for an individual purchase or contract*
 13 *or for a class of purchases or contracts. Such determinations*
 14 *and decisions are final.*

15 *“(b) WRITTEN FINDINGS REQUIRED.—(1) Each deter-*
 16 *mination under section 305(e) shall be based on a written*
 17 *finding by the person making the determination or decision.*
 18 *The finding shall set out facts and circumstances that sup-*
 19 *port the determination or decision.*

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

1 (b) *CLERICAL AMENDMENT.*—*The table of contents in*
2 *the first section of such Act, as amended by section 1552,*
3 *is further amended by inserting after the item relating to*
4 *section 309 the following:*

“Sec. 310. Determinations and decisions.”.

5 ***SEC. 1554. COOPERATIVE PURCHASING.***

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

9 “(b)(1) *The Administrator shall, as far as practicable,*
10 *provide any of the services specified in subsection (a) of this*
11 *section to any other Federal agency, mixed-ownership Gov-*
12 *ernment corporation (as defined in section 9101 of title 31,*
13 *United States Code), or the District of Columbia, upon its*
14 *request.*

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

18 “(i) *A State, any department or agency of a*
19 *State, and any political subdivision of a State, in-*
20 *cluding a local government.*

21 “(ii) *The District of Columbia.*

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

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

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

6 “(3)(A) Upon the request of a qualified nonprofit agen-
7 cy for the blind or other severely handicapped that is to
8 provide a commodity or service to the Federal Government
9 under the Javits-Wagner-O’Day Act, the Administrator
10 may provide any of the services specified in subsection (a)
11 to such agency to the extent practicable.

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

16 “(C) In this paragraph:

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

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

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

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

8 “(iii) The term ‘Javits-Wagner-O’Day Act’
 9 means the Act entitled ‘An Act to create a Committee
 10 on Purchases of Blind-made Products, and for other
 11 purposes’, approved June 25, 1938 (41 U.S.C. 46-
 12 48c), commonly referred to as the Wagner-O’Day Act,
 13 that was revised and reenacted in the Act of June 23,
 14 1971 (85 Stat. 77), commonly referred to as the Jav-
 15 its-Wagner-O’Day Act.’”.

16 **TITLE II—CONTRACT**
 17 **ADMINISTRATION**

18 **Subtitle A—Contract Payment**

19 **PART I—ARMED SERVICES ACQUISITIONS**

20 **SEC. 2001. CONTRACT FINANCING.**

21 (a) REORGANIZATION OF PRINCIPAL AUTHORITY PRO-
 22 VISION.—Section 2307 of title 10, United States Code, is
 23 amended—

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

1 **“§ 2307. Contract financing”;**

2 (2) by striking out “(a) The head of an agency”
3 and inserting in lieu thereof “(b) PAYMENT AUTHOR-
4 ITY.—The head of an agency”;

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

8 (4) by striking out “(c) Advance payments” and
9 inserting in lieu thereof “(e) SECURITY FOR ADVANCE
10 PAYMENTS.—Advance payments”;

11 (5) by striking out “(d)(1) The Secretary of De-
12 fense” and inserting in lieu thereof “(f) CONDITIONS
13 FOR PROGRESS PAYMENTS.—(1) The Secretary of De-
14 fense”; and

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

18 (b) FINANCING POLICY.—Such section, as amended by
19 subsection (a), is further amended by inserting after the sec-
20 tion heading the following new subsection (a):

21 “(a) POLICY.—Payments authorized under this section
22 and made for financing purposes should be made periodi-
23 cally or, when appropriate, on an advance basis and should
24 be so made in a timely manner to facilitate contract per-
25 formance while protecting the security interests of the Gov-
26 ernment. Government financing shall be provided only to

1 *the extent necessary to ensure prompt and efficient perform-*
2 *ance and only after the availability of private financing*
3 *is considered. A contractor's use of funds received as con-*
4 *tract financing and the contractor's financial condition*
5 *shall be monitored. If the contractor is a small business con-*
6 *cern, special attention shall be given to meeting the contrac-*
7 *tor's financial need."*

8 (c) *PERFORMANCE-BASED PAYMENTS.—Such section,*
9 *as amended by subsection (a), is further amended by insert-*
10 *ing after subsection (b) the following new subsection (c):*

11 “(c) *PERFORMANCE-BASED PAYMENTS.—Whenever*
12 *practicable, payments under subsection (b) shall be made*
13 *on any of the following bases:*

14 “(1) *Performance measured by objective, quan-*
15 *tifiable methods such as receipt of items by the Fed-*
16 *eral Government, work measurement, or statistical*
17 *process controls.*

18 “(2) *Accomplishment of events defined in the*
19 *program management plan.*

20 “(3) *Other quantifiable measures of results.”*

21 (d) *TERMINOLOGY CORRECTION.—Such section, as*
22 *amended by subsection (a)(2), is further amended in sub-*
23 *section (b)(2) by striking out “bid”.*

24 (e) *EFFECTIVE DATE OF LIEN RELATED TO ADVANCE*
25 *PAYMENTS.—Such section, as amended by subsection*

1 (a)(4), is further amended in subsection (e) by inserting be-
2 fore the period at the end of the third sentence the following:
3 “and is effective immediately upon the first advancement
4 of funds without filing, notice, or any other action by the
5 United States”.

6 (f) *CONDITIONS FOR PROGRESS PAYMENTS.*—Such
7 section, as amended by subsection (a)(5), is further amend-
8 ed in subsection (f)—

9 (1) in the first sentence of paragraph (1), by
10 striking out “work, which” and all that follows
11 through “accomplished” and inserting in lieu thereof
12 “work accomplished that meets standards established
13 under the contract”; and

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

16 “(3) This subsection applies to a contract for an
17 amount equal to or greater than the simplified acquisition
18 threshold.”.

19 (g) *NAVY CONTRACTS.*—Such section, as amended by
20 subsection (a)(5), is further amended by inserting after sub-
21 section (f) the following new subsection (g):

22 “(g) *CERTAIN NAVY CONTRACTS.*—(1) The Secretary
23 of the Navy shall provide that the rate for progress pay-
24 ments on any contract awarded by the Secretary for repair,

1 *maintenance, or overhaul of a naval vessel shall be not less*
2 *than—*

3 “(A) 95 percent, in the case of firms considered
4 *to be small businesses; and*

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

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

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

19 (h) *CONFORMING AND CLERICAL AMENDMENTS.—*

20 (1) *CROSS REFERENCE.—Such section, as*
21 *amended by subsection (a), is further amended in sub-*
22 *sections (d) and (e) by striking out “subsection (a)”*
23 *and inserting in lieu thereof “subsection (b)”.*

24 (2) *TABLE OF CONTENTS.—The table of sections*
25 *at the beginning of chapter 137 of title 10, United*

1 *States Code, is amended by striking out the item re-*
2 *lating to section 2307 and inserting in lieu thereof the*
3 *following:*

“2307. Contract financing.”.

4 *(i) REPEAL OF SUPERSEDED PROVISIONS.—*

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

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

9 *(B) CLERICAL AMENDMENT.—The table of*
10 *sections at the beginning of chapter 633 of such*
11 *title is amended by striking out the item relating*
12 *to section 7312.*

13 *(2) ADVANCEMENT OF PAYMENTS FOR NAVY SAL-*
14 *VAGE OPERATIONS.—*

15 *(A) REPEAL.—Section 7364 of such title is*
16 *repealed.*

17 *(B) CLERICAL AMENDMENT.—The table of*
18 *sections at the beginning of chapter 637 of such*
19 *title is amended by striking out the item relating*
20 *to section 7364.*

21 *(3) PARTIAL PAYMENTS UNDER NAVY CON-*
22 *TRACTS.—*

23 *(A) REPEAL.—Section 7521 of such title is*
24 *repealed.*

1 (B) *CLERICAL AMENDMENT.*—The table of
2 sections at the beginning of chapter 645 of such
3 title is amended by striking out the item relating
4 to section 7521.

5 **SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.**

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

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

11 **PART II—CIVILIAN AGENCY ACQUISITIONS**

12 **SEC. 2051. CONTRACT FINANCING.**

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

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

18 “CONTRACT FINANCING”;

19 (2) by striking out “(a) Any executive agency”
20 and inserting in lieu thereof “(b) PAYMENT AUTHOR-
21 ITY.—Any executive agency”;

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

1 (4) by striking out “(c) Advance payments” and
2 inserting in lieu thereof “(e) SECURITY FOR ADVANCE
3 PAYMENTS.—Advance payments”.

4 (b) FINANCING POLICY.—Such section, as amended by
5 subsection (a), is further amended by inserting after the sec-
6 tion heading the following new subsection (a):

7 “(a) POLICY.—Payments authorized under this section
8 and made for financing purposes should be made periodi-
9 cally or, when appropriate, on an advance basis and should
10 be so made in a timely manner to facilitate contract per-
11 formance while protecting the security interests of the Gov-
12 ernment. Government financing shall be provided only to
13 the extent necessary to ensure prompt and efficient perform-
14 ance and only after the availability of private financing
15 is considered. A contractor’s use of funds received as con-
16 tract financing and the contractor’s financial condition
17 shall be monitored. If the contractor is a small business con-
18 cern, special attention shall be given to meeting the contrac-
19 tor’s financial need.”.

20 (c) PERFORMANCE-BASED PAYMENTS.—Such section,
21 as amended by subsection (a), is further amended by insert-
22 ing after subsection (b) the following new subsection (c):

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

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

5 “(2) Accomplishment of events defined in the
6 program management plan.

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

8 (d) *TERMINOLOGY CORRECTION.*—Such section, as
9 amended by subsection (a)(2), is further amended in sub-
10 section (b)(2) by striking out “bid”.

11 (e) *EFFECTIVE DATE OF LIEN RELATED TO ADVANCE*
12 *PAYMENTS.*—Such section, as amended by subsection
13 (a)(4), is further amended in subsection (e) by inserting be-
14 fore the period at the end of the third sentence the following:
15 “and is effective immediately upon the first advancement
16 of funds without filing, notice, or any other action by the
17 United States”.

18 (f) *REVISION OF CIVILIAN AGENCY PROVISION TO EN-*
19 *SURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-*
20 *MENTS.*—

21 (1) *IN GENERAL.*—Such section, as amended by
22 subsection (a), is further amended by adding at the
23 end the following:

24 “(f) *CONDITIONS FOR PROGRESS PAYMENTS.*—(1) The
25 agency head shall ensure that any payment for work in

1 *progress (including materials, labor, and other items) under*
2 *a contract of an executive agency that provides for such*
3 *payments is commensurate with the work accomplished that*
4 *meets standards established under the contract. The contrac-*
5 *tor shall provide such information and evidence as the agen-*
6 *cy head determines necessary to permit the agency head to*
7 *carry out the preceding sentence.*

8 “(2) *The agency head shall ensure that progress pay-*
9 *ments referred to in paragraph (1) are not made for more*
10 *than 80 percent of the work accomplished under the contract*
11 *so long as the agency head has not made the contractual*
12 *terms, specifications, and price definite.*

13 “(3) *This subsection applies to a contract for an*
14 *amount equal to or greater than the simplified acquisition*
15 *threshold.*

16 “(g) *ACTION IN CASE OF FRAUD.—(1) In any case in*
17 *which the remedy coordination official of an executive agen-*
18 *cy finds that there is substantial evidence that the request*
19 *of a contractor for advance, partial, or progress payment*
20 *under a contract awarded by that executive agency is based*
21 *on fraud, the remedy coordination official shall recommend*
22 *that the agency head reduce or suspend further payments*
23 *to such contractor.*

24 “(2) *An agency head receiving a recommendation*
25 *under paragraph (1) in the case of a contractor’s request*

1 *for payment under a contract shall determine whether there*
2 *is substantial evidence that the request is based on fraud.*
3 *Upon making such a determination, the agency head may*
4 *reduce or suspend further payments to the contractor under*
5 *such contract.*

6 “(3) *The extent of any reduction or suspension of pay-*
7 *ments by an agency head under paragraph (2) on the basis*
8 *of fraud shall be reasonably commensurate with the antici-*
9 *pated loss to the United States resulting from the fraud.*

10 “(4) *A written justification for each decision of the*
11 *agency head whether to reduce or suspend payments under*
12 *paragraph (2), and for each recommendation received by*
13 *the agency head in connection with such decision, shall be*
14 *prepared and be retained in the files of the executive agency.*

15 “(5) *Each agency head shall prescribe procedures to*
16 *ensure that, before the agency head decides to reduce or sus-*
17 *pend payments in the case of a contractor under paragraph*
18 *(2), the contractor is afforded notice of the proposed reduc-*
19 *tion or suspension and an opportunity to submit matters*
20 *to the head of the agency in response to such proposed reduc-*
21 *tion or suspension.*

22 “(6) *Not later than 180 days after the date on which*
23 *an agency head reduces or suspends payments to a contrac-*
24 *tor under paragraph (2), the remedy coordination official*
25 *of the executive agency shall—*

1 “(A) review the determination of fraud on which
2 the reduction or suspension is based; and

3 “(B) transmit a recommendation to the agency
4 head whether the suspension or reduction should con-
5 tinue.

6 “(7) Each agency head who receives recommendations
7 made by a remedy coordination official of the executive
8 agency to reduce or suspend payments under paragraph (2)
9 during a fiscal year shall prepare for such year a report
10 that contains the recommendations, the actions taken on the
11 recommendations and the reasons for such actions, and an
12 assessment of the effects of such actions on the Federal Gov-
13 ernment. Any such report shall be available to any Member
14 of Congress upon request.

15 “(8) An agency head may not delegate responsibilities
16 under this subsection to any person in a position below level
17 IV of the Executive Schedule.

18 “(9) In this subsection, the term ‘remedy coordination
19 official’, with respect to an executive agency, means the per-
20 son or entity in that executive agency who coordinates with-
21 in that executive agency the administration of criminal,
22 civil, administrative, and contractual remedies resulting
23 from investigations of fraud or corruption related to pro-
24 curement activities.”.

1 (2) *RELATIONSHIP TO PROMPT PAYMENT RE-*
 2 *QUIREMENTS.*—The amendments made by paragraph
 3 (1) are not intended to impair or modify procedures
 4 required by the provisions of chapter 39 of title 31,
 5 United States Code, and the regulations issued pursu-
 6 ant to such provisions of law, that relate to progress
 7 payment requests, as such procedures are in effect on
 8 the date of the enactment of this Act.

9 (g) *CONFORMING AND CLERICAL AMENDMENTS.*—

10 (1) *REFERENCE.*—Section 305 of the Federal
 11 Property and Administrative Services Act of 1949, as
 12 amended by subsection (a), is further amended in sub-
 13 sections (d) and (e) by striking out “subsection (a)”
 14 and inserting in lieu thereof “subsection (b)”.

15 (2) *TABLE OF CONTENTS.*—The table of contents
 16 in the first section of such Act is amended by striking
 17 out the item relating to section 305 and inserting in
 18 lieu thereof the following:

“Sec. 305. Contract financing.”.

19 ***Subtitle B—Cost Principles***

20 ***PART I—ARMED SERVICES ACQUISITIONS***

21 ***SEC. 2101. ALLOWABLE CONTRACT COSTS.***

22 (a) *COMPTROLLER GENERAL EVALUATION.*—Section
 23 2324 is amended by striking out subsection (l).

1 (b) *COVERED CONTRACT DEFINED.*—Subsection (m) of
2 section 2324 of title 10, United States Code, is amended
3 to read as follows:

4 “(1)(1) In this section, the term ‘covered contract’
5 means a contract for an amount in excess of \$500,000 that
6 is entered into by the Department of Defense, except that
7 such term does not include a fixed-price contract without
8 cost incentives.

9 “(2) Effective on October 1 of each year that is divis-
10 ible by 5, the amount set forth in paragraph (1) shall be
11 adjusted to the amount that is equal to the fiscal year 1994
12 constant dollar value of the amount set forth. An amount,
13 as so adjusted, that is not evenly divisible by \$50,000 shall
14 be rounded to the nearest multiple of \$50,000. In the case
15 of an amount that is evenly divisible by \$25,000 but is not
16 evenly divisible by \$50,000, the amount shall be rounded
17 to the next higher multiple of \$50,000.”.

18 **SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMER-**
19 **GENCY PERIODS.**

20 (a) *REPEAL.*—Section 2382 of title 10, United States
21 Code, is repealed.

22 (b) *CLERICAL AMENDMENT.*—The table of sections at
23 the beginning of chapter 141 of such title is amended by
24 striking out the item relating to section 2382.

1 **PART II—CIVILIAN AGENCY ACQUISITIONS**

2 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

3 (a) *REVISION OF CIVILIAN AGENCY PROVISION TO EN-*
4 *SURE UNIFORM TREATMENT OF CONTRACT COSTS.*—Sec-
5 *tion 306 of the Federal Property and Administrative Serv-*
6 *ices Act of 1949 (41 U.S.C. 256) is amended to read as*
7 *follows:*

8 “ALLOWABLE COSTS

9 “SEC. 306. (a) *INDIRECT COST THAT VIOLATES A*
10 *FAR COST PRINCIPLE.*—*The head of an executive agency*
11 *shall require that a covered contract provide that if the con-*
12 *tractor submits to the executive agency a proposal for settle-*
13 *ment of indirect costs incurred by the contractor for any*
14 *period after such costs have been accrued and if that pro-*
15 *posal includes the submission of a cost which is unallowable*
16 *because the cost violates a cost principle in the Federal Ac-*
17 *quisition Regulation or an executive agency’s supplement*
18 *to the Federal Acquisition Regulation, the cost shall be dis-*
19 *allowed.*

20 “(b) *PENALTY FOR VIOLATION OF COST PRINCIPLE.*—
21 *(1) If the agency head determines that a cost submitted by*
22 *a contractor in its proposal for settlement is expressly unal-*
23 *lowable under a cost principle referred to in subsection (a)*
24 *that defines the allowability of specific selected costs, the*
25 *agency head shall assess a penalty against the contractor*
26 *in an amount equal to—*

1 “(A) *the amount of the disallowed cost allocated*
2 *to covered contracts for which a proposal for settle-*
3 *ment of indirect costs has been submitted; plus*

4 “(B) *interest (to be computed based on regula-*
5 *tions issued by the agency head) to compensate the*
6 *United States for the use of any funds which a con-*
7 *tractor has been paid in excess of the amount to*
8 *which the contractor was entitled.*

9 “(2) *If the agency head determines that a proposal for*
10 *settlement of indirect costs submitted by a contractor in-*
11 *cludes a cost determined to be unallowable in the case of*
12 *such contractor before the submission of such proposal, the*
13 *agency head shall assess a penalty against the contractor*
14 *in an amount equal to two times the amount of the dis-*
15 *allowed cost allocated to covered contracts for which a pro-*
16 *posal for settlement of indirect costs has been submitted.*

17 “(c) *WAIVER OF PENALTY.—In accordance with the*
18 *Federal Acquisition Regulation, the agency head may waive*
19 *a penalty under subsection (b) in the case of a contractor’s*
20 *proposal for settlement of indirect costs when—*

21 “(1) *the contractor withdraws the proposal before*
22 *the formal initiation of an audit of the proposal by*
23 *the Federal Government and resubmits a revised pro-*
24 *posal;*

1 “(2) the amount of unallowable costs subject to
2 the penalty is insignificant; or

3 “(3) the contractor demonstrates, to the contract-
4 ing officer’s satisfaction, that—

5 “(A) it has established appropriate policies
6 and personnel training and an internal control
7 and review system that provide assurances that
8 unallowable costs subject to penalties are pre-
9 cluded from being included in the contractor’s
10 proposal for settlement of indirect costs; and

11 “(B) the unallowable costs subject to the
12 penalty were inadvertently incorporated into the
13 proposal.

14 “(d) *APPLICABILITY OF CONTRACT DISPUTES PROCE-*
15 *DURE TO DISALLOWANCE OF COST AND ASSESSMENT OF*
16 *PENALTY.*—An action of an agency head under subsection
17 (a) or (b)—

18 “(1) shall be considered a final decision for the
19 purposes of section 6 of the Contract Disputes Act of
20 1978 (41 U.S.C. 605); and

21 “(2) is appealable in the manner provided in
22 section 7 of such Act.

23 “(e) *SPECIFIC COSTS NOT ALLOWABLE.*—(1) The fol-
24 lowing costs are not allowable under a covered contract:

1 “(A) *Costs of entertainment, including amuse-*
2 *ment, diversion, and social activities, and any costs*
3 *directly associated with such costs (such as tickets to*
4 *shows or sports events, meals, lodging, rentals, trans-*
5 *portation, and gratuities).*

6 “(B) *Costs incurred to influence (directly or in-*
7 *directly) legislative action on any matter pending be-*
8 *fore Congress or a State legislature.*

9 “(C) *Costs incurred in defense of any civil or*
10 *criminal fraud proceeding or similar proceeding (in-*
11 *cluding filing of any false certification) brought by*
12 *the United States where the contractor is found liable*
13 *or had pleaded nolo contendere to a charge of fraud*
14 *or similar proceeding (including filing of a false cer-*
15 *tification).*

16 “(D) *Payments of fines and penalties resulting*
17 *from violations of, or failure to comply with, Federal,*
18 *State, local, or foreign laws and regulations, except*
19 *when incurred as a result of compliance with specific*
20 *terms and conditions of the contract or specific writ-*
21 *ten instructions from the contracting officer authoriz-*
22 *ing in advance such payments in accordance with the*
23 *Federal Acquisition Regulation.*

24 “(E) *Costs of membership in any social, dining,*
25 *or country club or organization.*

1 “(F) *Costs of alcoholic beverages.*

2 “(G) *Contributions or donations, regardless of*
3 *the recipient.*

4 “(H) *Costs of advertising designed to promote*
5 *the contractor or its products.*

6 “(I) *Costs of promotional items and memora-*
7 *bilia, including models, gifts, and souvenirs.*

8 “(J) *Costs for travel by commercial aircraft*
9 *which exceed the amount of the standard commercial*
10 *fare.*

11 “(K) *Costs incurred in making any payment*
12 *(commonly known as a ‘golden parachute payment’)*
13 *which is—*

14 “(i) *in an amount in excess of the normal*
15 *severance pay paid by the contractor to an em-*
16 *ployee upon termination of employment; and*

17 “(ii) *is paid to the employee contingent*
18 *upon, and following, a change in management*
19 *control over, or ownership of, the contractor or a*
20 *substantial portion of the contractor’s assets.*

21 “(L) *Costs of commercial insurance that protects*
22 *against the costs of the contractor for correction of the*
23 *contractor’s own defects in materials or workmanship.*

24 “(M) *Costs of severance pay paid by the contrac-*
25 *tor to foreign nationals employed by the contractor*

1 *under a service contract performed outside the United*
2 *States, to the extent that the amount of severance pay*
3 *paid in any case exceeds the amount paid in the in-*
4 *dustry involved under the customary or prevailing*
5 *practice for firms in that industry providing similar*
6 *services in the United States, as determined in ac-*
7 *cordance with the Federal Acquisition Regulation.*

8 *“(N) Costs of severance pay paid by the contrac-*
9 *tor to a foreign national employed by the contractor*
10 *under a service contract performed in a foreign coun-*
11 *try if the termination of the employment of the for-*
12 *ign national is the result of the closing of, or the cur-*
13 *tailment of activities at, a United States facility in*
14 *that country at the request of the government of that*
15 *country.*

16 *“(O) Costs incurred by a contractor in connec-*
17 *tion with any criminal, civil, or administrative pro-*
18 *ceeding commenced by the United States or a State,*
19 *to the extent provided in subsection (k).*

20 *“(2)(A) Subject to the availability of appropriations,*
21 *the head of an executive agency, in awarding a covered con-*
22 *tract, may waive in accordance with the Federal Acquisi-*
23 *tion Regulation the application of the provisions of para-*
24 *graphs (1)(M) and (1)(N) to that contract if the agency*
25 *head determines that—*

1 “(i) the application of such provisions to the
2 contract would adversely affect the continuation of a
3 program, project, or activity that provides significant
4 support services for employees of the executive agency
5 posted outside the United States;

6 “(ii) the contractor has taken (or has established
7 plans to take) appropriate actions within the contrac-
8 tor’s control to minimize the amount and number of
9 incidents of the payment of severance pay by the con-
10 tractor to employees under the contract who are for-
11 eign nationals; and

12 “(iii) the payment of severance pay is necessary
13 in order to comply with a law that is generally appli-
14 cable to a significant number of businesses in the
15 country in which the foreign national receiving the
16 payment performed services under the contract or is
17 necessary to comply with a collective bargaining
18 agreement.

19 “(B) The head of the executive agency concerned shall
20 include in the solicitation for a covered contract a statement
21 indicating—

22 “(i) that a waiver has been granted under sub-
23 paragraph (A) for the contract; or

24 “(ii) whether the agency head will consider
25 granting such a waiver, and, if the agency head will

1 *consider granting a waiver, the criteria to be used in*
2 *granting the waiver.*

3 *“(C) The agency head shall make the final determina-*
4 *tion regarding whether to grant a waiver under subpara-*
5 *graph (A) with respect to a covered contract before award*
6 *of the contract.*

7 *“(3) The head of each executive agency shall implement*
8 *this section with respect to contracts of that executive agen-*
9 *cy in accordance with the Federal Acquisition Regulation.*
10 *The provisions of the Federal Acquisition applicable to the*
11 *implementation of this section may include definitions, ex-*
12 *clusions, limitations, and qualifications.*

13 *“(f) REQUIRED REGULATIONS.—(1) The Federal Ac-*
14 *quisition Regulation referred to in section 25(c)(1) of the*
15 *Office of Federal Procurement Policy Act (41 U.S.C.*
16 *421(c)(1)) shall contain provisions on the allowability of*
17 *contractor costs. Such provisions shall define in detail and*
18 *in specific terms those costs which are unallowable, in whole*
19 *or in part, under covered contracts. The regulations shall,*
20 *at a minimum, clarify the cost principles applicable to con-*
21 *tractor costs of the following:*

22 *“(A) Air shows.*

23 *“(B) Membership in civic, community, and pro-*
24 *fessional organizations.*

25 *“(C) Recruitment.*

1 “(D) *Employee morale and welfare.*

2 “(E) *Actions to influence (directly or indirectly)*
3 *executive branch action on regulatory and contract*
4 *matters (other than costs incurred in regard to con-*
5 *tract proposals pursuant to solicited or unsolicited*
6 *bids).*

7 “(F) *Community relations.*

8 “(G) *Dining facilities.*

9 “(H) *Professional and consulting services, in-*
10 *cluding legal services.*

11 “(I) *Compensation.*

12 “(J) *Selling and marketing.*

13 “(K) *Travel.*

14 “(L) *Public relations.*

15 “(M) *Hotel and meal expenses.*

16 “(N) *Expense of corporate aircraft.*

17 “(O) *Company-furnished automobiles.*

18 “(P) *Advertising.*

19 “(2) *The Federal Acquisition Regulation shall require*
20 *that a contracting officer not resolve any questioned costs*
21 *until the contracting officer has obtained—*

22 “(A) *adequate documentation with respect to*
23 *such costs; and*

24 “(B) *the opinion of the executive agency’s con-*
25 *tract auditor on the allowability of such costs.*

1 “(3) *The Federal Acquisition Regulation shall provide*
2 *that, to the maximum extent practicable, an executive agen-*
3 *cy’s contract auditor be present at any negotiation or meet-*
4 *ing with the contractor regarding a determination of the*
5 *allowability of indirect costs of the contractor.*

6 “(4) *The Federal Acquisition Regulation shall require*
7 *that all categories of costs designated in the report of an*
8 *executive agency’s contract auditor as questioned with re-*
9 *spect to a proposal for settlement be resolved in such a man-*
10 *ner that the amount of the individual questioned costs that*
11 *are paid will be reflected in the settlement.*

12 “(g) *APPLICABILITY OF REQUIRED REGULATIONS TO*
13 *SUBCONTRACTORS.—The regulations prescribed to carry*
14 *out subsections (e) and (f)(1) shall require, to the maximum*
15 *extent practicable, that such regulations apply to all sub-*
16 *contractors of a covered contract.*

17 “(h) *CONTRACTOR CERTIFICATION REQUIRED.—(1) A*
18 *proposal for settlement of indirect costs applicable to a cov-*
19 *ered contract shall include a certification by an official of*
20 *the contractor that, to the best of the certifying official’s*
21 *knowledge and belief, all indirect costs included in the pro-*
22 *posal are allowable. Any such certification shall be in a*
23 *form prescribed by the agency head concerned.*

24 “(2) *The agency head concerned may, in an excep-*
25 *tional case, waive the requirement for certification under*

1 paragraph (1) in the case of any contract if the agency
2 head—

3 “(A) determines in such case that it would be in
4 the interest of the United States to waive such certifi-
5 cation; and

6 “(B) states in writing the reasons for that deter-
7 mination and makes such determination available to
8 the public.

9 “(i) *PENALTIES FOR SUBMISSION OF COST KNOWN AS*
10 *NOT ALLOWABLE.*—The submission to an executive agency
11 of a proposal for settlement of costs for any period after
12 such costs have been accrued that includes a cost that is
13 expressly specified by statute or regulation as being unal-
14 lowable, with the knowledge that such cost is unallowable,
15 shall be subject to the provisions of section 287 of title 18,
16 United States Code, and section 3729 of title 31, United
17 States Code.

18 “(j) *CONTRACTOR TO HAVE BURDEN OF PROOF.*—In
19 a proceeding before a board of contract appeals, the United
20 States Court of Federal Claims, or any other Federal court
21 in which the reasonableness of indirect costs for which a
22 contractor seeks reimbursement from the United States is
23 in issue, the burden of proof shall be upon the contractor
24 to establish that those costs are reasonable.

1 “(k) *PROCEEDING COSTS NOT ALLOWABLE.*—(1) *Ex-*
2 *cept as otherwise provided in this subsection, costs incurred*
3 *by a contractor in connection with any criminal, civil, or*
4 *administrative proceeding commenced by the United States*
5 *or a State are not allowable as reimbursable costs under*
6 *a covered contract if the proceeding (A) relates to a viola-*
7 *tion of, or failure to comply with, a Federal or State statute*
8 *or regulation, and (B) results in a disposition described in*
9 *paragraph (2).*

10 “(2) *A disposition referred to in paragraph (1)(B) is*
11 *any of the following:*

12 “(A) *In the case of a criminal proceeding, a con-*
13 *viction (including a conviction pursuant to a plea of*
14 *nolo contendere) by reason of the violation or failure*
15 *referred to in paragraph (1).*

16 “(B) *In the case of a civil or administrative pro-*
17 *ceeding involving an allegation of fraud or similar*
18 *misconduct, a determination of contractor liability on*
19 *the basis of the violation or failure referred to in*
20 *paragraph (1).*

21 “(C) *In the case of any civil or administrative*
22 *proceeding, the imposition of a monetary penalty by*
23 *reason of the violation or failure referred to in para-*
24 *graph (1).*

25 “(D) *A final decision—*

1 “(i) to debar or suspend the contractor,
2 “(ii) to rescind or void the contract, or
3 “(iii) to terminate the contract for default,
4 *by reason of the violation or failure referred to in*
5 *paragraph (1).*

6 “(E) A disposition of the proceeding by consent
7 *or compromise if such action could have resulted in*
8 *a disposition described in subparagraph (A), (B), (C),*
9 *or (D).*

10 “(3) *In the case of a proceeding referred to in para-*
11 *graph (1) that is commenced by the United States and is*
12 *resolved by consent or compromise pursuant to an agree-*
13 *ment entered into by a contractor and the United States,*
14 *the costs incurred by the contractor in connection with such*
15 *proceeding that are otherwise not allowable as reimbursable*
16 *costs under such paragraph may be allowed to the extent*
17 *specifically provided in such agreement.*

18 “(4) *In the case of a proceeding referred to in para-*
19 *graph (1) that is commenced by a State, the agency head*
20 *that awarded the covered contract involved in the proceed-*
21 *ing may allow the costs incurred by the contractor in con-*
22 *nection with such proceeding as reimbursable costs if the*
23 *agency head determines, under regulations prescribed by*
24 *such agency head, that the costs were incurred as a result*

1 of (A) a specific term or condition of the contract, or (B)
2 specific written instructions of the agency.

3 “(5)(A) Except as provided in subparagraph (C), costs
4 incurred by a contractor in connection with a criminal,
5 civil, or administrative proceeding commenced by the Unit-
6 ed States or a State in connection with a covered contract
7 may be allowed as reimbursable costs under the contract
8 if such costs are not disallowable under paragraph (1), but
9 only to the extent provided in subparagraph (B).

10 “(B)(i) The amount of the costs allowable under sub-
11 paragraph (A) in any case may not exceed the amount
12 equal to 80 percent of the amount of the costs incurred, to
13 the extent that such costs are determined to be otherwise
14 allowable and allocable under the Federal Acquisition Regu-
15 lations.

16 “(ii) Regulations issued for the purpose of clause (i)
17 shall provide for appropriate consideration of the complex-
18 ity of procurement litigation, generally accepted principles
19 governing the award of legal fees in civil actions involving
20 the United States as a party, and such other factors as may
21 be appropriate.

22 “(C) In the case of a proceeding referred to in subpara-
23 graph (A), contractor costs otherwise allowable as reimburs-
24 able costs under this paragraph are not allowable if (i) such
25 proceeding involves the same contractor misconduct alleged

1 *as the basis of another criminal, civil, or administrative*
2 *proceeding, and (ii) the costs of such other proceeding are*
3 *not allowable under paragraph (1).*

4 *“(6) In this subsection:*

5 *“(A) The term ‘proceeding’ includes an inves-*
6 *tigation.*

7 *“(B) The term ‘costs’, with respect to a proceed-*
8 *ing—*

9 *“(i) means all costs incurred by a contrac-*
10 *tor, whether before or after the commencement of*
11 *any such proceeding; and*

12 *“(ii) includes—*

13 *“(I) administrative and clerical ex-*
14 *penses;*

15 *“(II) the cost of legal services, includ-*
16 *ing legal services performed by an employee*
17 *of the contractor;*

18 *“(III) the cost of the services of ac-*
19 *countants and consultants retained by the*
20 *contractor; and*

21 *“(IV) the pay of directors, officers, and*
22 *employees of the contractor for time devoted*
23 *by such directors, officers, and employees to*
24 *such proceeding.*

1 “(C) The term ‘penalty’ does not include restitu-
2 tion, reimbursement, or compensatory damages.

3 “(1) COVERED CONTRACT DEFINED.—(1) In this sec-
4 tion, the term ‘covered contract’ means a contract for an
5 amount in excess of \$500,000 that is entered into by an
6 executive agency, except that such term does not include a
7 fixed-price contract without cost incentives.

8 “(2) Effective on October 1 of each year that is divis-
9 ible by 5, the amount set forth in paragraph (1) shall be
10 adjusted to the amount that is equal to the fiscal year 1994
11 constant dollar value of the amount set forth. An amount,
12 as so adjusted, that is not evenly divisible by \$50,000 shall
13 be rounded to the nearest multiple of \$50,000. In the case
14 of an amount that is evenly divisible by \$25,000 but is not
15 evenly divisible by \$50,000, the amount shall be rounded
16 to the next higher multiple of \$50,000.”.

17 (b) CLERICAL AMENDMENT.—The table of contents in
18 the first section of such Act is amended by striking out the
19 item relating to section 306 and inserting in lieu thereof
20 the following:

 “Sec. 306. Allowable costs.”.

21 **PART III—ACQUISITIONS GENERALLY**

22 **SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-**
23 **TORS.**

24 Section 24 of the Office of Federal Procurement Policy
25 Act (41 U.S.C. 420) is repealed.

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

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY**
5 **TO EXAMINE RECORDS OF CONTRACTORS.**

6 (a) *AUTHORITY.*—

7 (1) *IN GENERAL.*—Section 2313 of title 10, Unit-
8 ed States Code, is amended to read as follows:

9 **“§ 2313. Examination of records of contractor**

10 “(a) *AGENCY AUTHORITY.*—The head of an agency,
11 acting through an authorized representative—

12 “(1) is entitled to inspect the plant and audit
13 the records of—

14 “(A) a contractor performing a cost-reim-
15 bursement, incentive, time-and-materials, labor-
16 hour, or price-redeterminable contract, or any
17 combination of such contracts, made by that
18 agency under this chapter; and

19 “(B) a subcontractor performing any cost-
20 reimbursement, incentive, time-and-materials,
21 labor-hour, or price-redeterminable subcontract
22 under a contract referred to in subparagraph (A)
23 or under any combination of such contracts; and

24 “(2) shall, for the purpose of evaluating the accu-
25 racy, completeness, and currency of cost or pricing

1 *data required to be submitted pursuant to section*
2 *2306a of this title with respect to a contract or sub-*
3 *contract, have the right to examine all records of the*
4 *contractor or subcontractor related to—*

5 *“(A) the proposal for the contract or sub-*
6 *contract;*

7 *“(B) the discussions conducted on the pro-*
8 *posal;*

9 *“(C) pricing of the contract or subcontract;*
10 *or*

11 *“(D) performance of the contract or sub-*
12 *contract.*

13 *“(b) LIMITATION ON PREAWARD AUDITS RELATING TO*
14 *INDIRECT COSTS.—The head of an 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 chapter in any case in which the*
18 *contracting 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 *“(c) SUBPOENA POWER.—(1) The Director of the De-*
24 *fense Contract Audit Agency (or any successor agency) may*
25 *require by subpoena the production of records of a contrac-*

1 *tor, access to which is provided to the Secretary of Defense*
2 *or Secretary of a military department by subsection (a).*

3 “(2) *Any such subpoena, in the case of contumacy or*
4 *refusal to obey, shall be enforceable by order of an appro-*
5 *priate United States district court.*

6 “(3) *The authority provided by paragraph (1) may not*
7 *be redelegated.*

8 “(4) *The Director (or any successor official) shall sub-*
9 *mit an annual report to the Secretary of Defense on the*
10 *exercise of such authority during the preceding year and*
11 *the reasons why such authority was exercised in any in-*
12 *stance. The Secretary shall forward a copy of each such re-*
13 *port to the Committees on Armed Services of the Senate*
14 *and House of Representatives.*

15 “(d) *COMPTROLLER GENERAL AUTHORITY.—(1) Ex-*
16 *cept as provided in paragraph (2), each contract awarded*
17 *after using procedures other than sealed bid procedures shall*
18 *provide that the Comptroller General and his representa-*
19 *tives are entitled to examine any records of the contractor,*
20 *or any of its subcontractors, that directly pertain to, and*
21 *involve transactions relating to, the contract or subcontract.*

22 “(2) *Paragraph (1) does not apply to a contract or*
23 *subcontract with a foreign contractor or foreign subcontrac-*
24 *tor if the head of the agency concerned determines, with the*
25 *concurrence of the Comptroller General or his designee, that*

1 *the application of that paragraph to the contract or sub-*
2 *contract would not be in the public interest. However, the*
3 *concurrence of the Comptroller General or his designee is*
4 *not required—*

5 “(A) *where the contractor or subcontractor is a*
6 *foreign government or agency thereof or is precluded*
7 *by the laws of the country involved from making its*
8 *records available for examination; and*

9 “(B) *where the head of the agency determines,*
10 *after taking into account the price and availability of*
11 *the property and services from United States sources,*
12 *that the public interest would be best served by not*
13 *applying paragraph (1).*

14 “(3) *Paragraph (1) may not be construed to require*
15 *a contractor or subcontractor to create or maintain any*
16 *record that the contractor or subcontractor does not main-*
17 *tain in the ordinary course of business or pursuant to an-*
18 *other provision of law.*

19 “(e) *LIMITATION.—The right of the head of an agency*
20 *under subsection (a), and the right of the Comptroller Gen-*
21 *eral under subsection (d), with respect to a contract or sub-*
22 *contract shall expire three years after final payment under*
23 *such contract or subcontract.*

1 “(f) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—This
2 section is inapplicable with respect to the following con-
3 tracts:

4 “(1) *Contracts for utility services at rates not ex-*
5 *ceeding those established to apply uniformly to the*
6 *public, plus any applicable reasonable connection*
7 *charge.*

8 “(g) *RECORDS DEFINED.*—In this section, the term
9 ‘records’ includes books, documents, accounting procedures
10 and practices, and other data, regardless of type and re-
11 gardless of whether such items are in written form, in the
12 form of computer data, or in any other form.”.

13 (2) *CLERICAL AMENDMENT.*—The item relating
14 to such section in the table of sections at the begin-
15 ning of chapter 137 of title 10, United States Code,
16 is amended to read as follows:

“2313. *Examination of records of contractor.*”.

17 (b) *REPEAL OF SUPERSEDED PROVISION.*—

18 (1) *REPEAL.*—Section 2406 of title 10, United
19 States Code, is repealed.

20 (2) *CLERICAL AMENDMENT.*—The table of sec-
21 tions at the beginning of chapter 141 of such title is
22 amended by striking out the item relating to section
23 2406.

1 “(2) shall, for the purpose of evaluating the accu-
2 racy, completeness, and currency of cost or pricing
3 data required to be submitted pursuant to section
4 304A with respect to a contract or subcontract, have
5 the right to examine all records of the contractor or
6 subcontractor related to—

7 “(A) the proposal for the contract or sub-
8 contract;

9 “(B) the discussions conducted on the pro-
10 posal;

11 “(C) pricing of the contract or subcontract;

12 or

13 “(D) performance of the contract or sub-
14 contract.

15 “(b) *LIMITATION ON PREAWARD AUDITS RELATING TO*
16 *INDIRECT COSTS.*—The agency head may not perform a
17 *preaward audit to evaluate proposed indirect costs under*
18 *any contract, subcontract, or modification to be entered into*
19 *in accordance with this title in any case in which the con-*
20 *tracting officer determines that the objectives of the audit*
21 *can reasonably be met by accepting the results of an audit*
22 *conducted by any other department or agency of the Federal*
23 *Government within one year preceding the date of the con-*
24 *tracting officer’s determination.*

1 “(c) *SUBPOENA POWER.*—(1) *The agency head may re-*
2 *quire by subpoena the production of records of a contractor,*
3 *access to which is provided by subsection (a).*

4 “(2) *Any such subpoena, in the case of contumacy or*
5 *refusal to obey, shall be enforceable by order of an appro-*
6 *priate United States district court.*

7 “(3) *The authority provided by paragraph (1) may not*
8 *be delegated.*

9 “(4) *In the year following a year in which the head*
10 *of an executive agency exercises the authority provided in*
11 *paragraph (1), the agency head shall submit to the Commit-*
12 *tee on Governmental Affairs of the Senate and the Commit-*
13 *tee on Government Operations of the House of Representa-*
14 *tives a report on the exercise of such authority during such*
15 *preceding year and the reasons why such authority was ex-*
16 *ercised in any instance.*

17 “(d) *COMPTROLLER GENERAL AUTHORITY.*—(1) *Ex-*
18 *cept as provided in paragraph (2), each contract awarded*
19 *after using procedures other than sealed bid procedures shall*
20 *provide that the Comptroller General and his representa-*
21 *tives are entitled to examine any records of the contractor,*
22 *or any of its subcontractors, that directly pertain to, and*
23 *involve transactions relating to, the contract or subcontract.*

24 “(2) *Paragraph (1) does not apply to a contract or*
25 *subcontract with a foreign contractor or foreign subcontrac-*

1 *tor if the agency head concerned determines, with the con-*
2 *currence of the Comptroller General or his designee, that*
3 *the application of that paragraph to the contract or sub-*
4 *contract would not be in the public interest. However, the*
5 *concurrence of the Comptroller General or his designee is*
6 *not required.*

7 “(3) Paragraph (1) may not be construed to require
8 a contractor or subcontractor to create or maintain any
9 record that the contractor or subcontractor does not main-
10 tain in the ordinary course of business or pursuant to an-
11 other provision of law—

12 “(A) where the contractor or subcontractor is a
13 foreign government or agency thereof or is precluded
14 by the laws of the country involved from making its
15 records available for examination; and

16 “(B) where the agency head determines, after
17 taking into account the price and availability of the
18 property and services from United States sources, that
19 the public interest would be best served by not apply-
20 ing paragraph (1).

21 “(e) LIMITATION.—The right of an agency head under
22 subsection (a), and the right of the Comptroller General
23 under subsection (d), with respect to a contract or sub-
24 contract shall expire three years after final payment under
25 such contract or subcontract.

1 “(f) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—This
2 section is inapplicable with respect to the following con-
3 tracts:

4 “(1) *CONTRACTS.*—For utility services at rates
5 not exceeding those established to apply uniformly to
6 the public, plus any applicable reasonable connection
7 charge.

8 “(g) *RECORDS DEFINED.*—In this section, the term
9 ‘records’ includes books, documents, accounting procedures
10 and practices, and other data, regardless of type and re-
11 gardless of whether such items are in written form, in the
12 form of computer data, or in any other form.”.

13 “(2) *CLERICAL AMENDMENT.*—The table of con-
14 tents in the first section of such Act, as amended by
15 section 1251(b), is further amended by inserting after
16 the item relating to section 304A the following:

“Sec. 304B. Examination of records of contractor.”.

17 “(b) *REPEAL OF SUPERSEDED PROVISION.*—Section
18 304 of the Federal Property and Administrative Services
19 Act of 1949 (41 U.S.C. 254) is amended by striking out
20 subsection (c).

21 ***Subtitle D—Cost Accounting***
22 ***Standards***

23 ***SEC. 2301. EXCEPTIONS TO COVERAGE.***

24 Section 26(f)(2) of the Office of Federal Procurement
25 Policy Act (41 U.S.C. 422(f)(2)) is amended—

1 (1) by inserting “(A)” after “(2)”;

2 (2) by striking out “, other than contracts or
3 subcontracts” and all that follows and inserting in
4 lieu thereof a period; and

5 (3) by inserting at the end the following:

6 “(B) Subparagraph (A) does not apply to the following
7 contracts or subcontracts:

8 “(i) Contracts or subcontracts where the price
9 negotiated is based on established catalog or market
10 prices of commercial items sold in substantial quan-
11 tities to the general public.

12 “(ii) Contracts or subcontracts where the price
13 negotiated is based on prices set by law or regulation.

14 “(iii) Any other firm fixed-price contract or sub-
15 contract for commercial items which is excepted from
16 the requirement to provide cost or pricing data pur-
17 suant to subsection (b) or (d) of section 2306a of title
18 10, United States Code, or subsection (b) or (d) of sec-
19 tion 304A of the Federal Property and Administra-
20 tive Services Act of 1949.

21 “(C) In this paragraph, the term ‘subcontract’ includes
22 a transfer of commercial items between divisions, subsidi-
23 aries, or affiliates of a contractor.”.

1 **SEC. 2302. REPEAL OF OBSOLETE DEADLINE REGARDING**
 2 **PROCEDURAL REGULATIONS FOR THE COST**
 3 **ACCOUNTING STANDARDS BOARD.**

4 *Section 26(f)(3) of the Office of Federal Procurement*
 5 *Policy Act (41 U.S.C. 422(f)(3)) is amended in the first*
 6 *sentence by striking out “Not later than 180 days after the*
 7 *date of the enactment of this section, the Administrator”*
 8 *and inserting in lieu thereof “The Administrator”.*

9 **Subtitle E—Administration of Con-**
 10 **tract Provisions Relating to**
 11 **Price, Delivery, and Product**
 12 **Quality**

13 **PART I—ARMED SERVICES ACQUISITIONS**

14 **SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND**
 15 **SHIP SPARE PARTS; QUALITY CONTROL.**

16 (a) *REPEAL.*—*Section 2383 of title 10, United States*
 17 *Code, is repealed.*

18 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 19 *the beginning of chapter 141 of such title is amended by*
 20 *striking out the item relating to section 2383.*

21 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**
 22 **ON SYSTEMS.**

23 *Section 2403(h) of title 10, United States Code, is*
 24 *amended—*

25 (1) *by redesignating paragraph (2) as para-*
 26 *graph (3); and*

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

3 “(2) The regulations shall include the following:

4 “(A) Guidelines for negotiating contractor guar-
5 antees that are reasonable and cost effective, as deter-
6 mined on the basis of the likelihood of defects and the
7 estimated cost of correcting such defects.

8 “(B) Procedures for administering contractor
9 guarantees.

10 “(C) Guidelines for determining the cases in
11 which it may be appropriate to waive the require-
12 ments of this section.”.

13 **PART II—ACQUISITIONS GENERALLY**

14 **SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EX-**
15 **PANSION OF AUTHORITY TO PROHIBIT**
16 **SETOFFS AGAINST ASSIGNEES; REORGANIZA-**
17 **TION OF SECTION; REVISION OF OBSOLETE**
18 **PROVISIONS.**

19 Section 3737 of the Revised Statutes (41 U.S.C. 15)
20 is amended to read as follows:

21 “SEC. 3737. (a) No contract or order, or any interest
22 therein, shall be transferred by the party to whom such con-
23 tract or order is given to any other party, and any such
24 transfer shall cause the annulment of the contract or order
25 transferred, so far as the United States is concerned. All

1 *rights of action, however, for any breach of such contract*
2 *by the contracting parties, are reserved to the United States.*

3 “(b) *The provisions of subsection (a) shall not apply*
4 *in any case in which the moneys due or to become due from*
5 *the United States or from any agency or department there-*
6 *of, under a contract providing for payments aggregating*
7 *\$1,000 or more, are assigned to a bank, trust company, or*
8 *other financing institution, including any Federal lending*
9 *agency, provided:*

10 “(1) *That, in the case of any contract entered*
11 *into after October 9, 1940, no claim shall be assigned*
12 *if it arises under a contract which forbids such as-*
13 *signment.*

14 “(2) *That, unless otherwise expressly permitted*
15 *by such contract, any such assignment shall cover all*
16 *amounts payable under such contract and not already*
17 *paid, shall not be made to more than one party, and*
18 *shall not be subject to further assignment, except that*
19 *any such assignment may be made to one party as*
20 *agent or trustee for two or more parties participating*
21 *in such financing.*

22 “(3) *That, in the event of any such assignment,*
23 *the assignee thereof shall file written notice of the as-*
24 *signment together with a true copy of the instrument*
25 *of the assignment with—*

1 “(A) the contracting officer or the head of
2 his department or agency;

3 “(B) the surety or sureties upon the bond or
4 bonds, if any, in connection with such contract;
5 and

6 “(C) the disbursing officer, if any, des-
7 ignated in such contract to make payment.

8 “(c) Notwithstanding any law to the contrary govern-
9 ing the validity of assignments, any assignment pursuant
10 to this section shall constitute a valid assignment for all
11 purposes.

12 “(d) In any case in which moneys due or to become
13 due under any contract are or have been assigned pursuant
14 to this section, no liability of any nature of the assignor
15 to the United States or any department or agency thereof,
16 whether arising from or independently of such contract,
17 shall create or impose any liability on the part of the as-
18 signee to make restitution, refund, or repayment to the
19 United States of any amount heretofore since July 1, 1950,
20 or hereafter received under the assignment.

21 “(e) Any contract of the Department of Defense, the
22 General Services Administration, the Department of En-
23 ergy, or any other department or agency of the United
24 States designated by the President, except any such contract
25 under which full payment has been made, may, upon a de-

1 *termination of need by the President, provide or be amend-*
2 *ed without consideration to provide that payments to be*
3 *made to the assignee of any moneys due or to become due*
4 *under such contract shall not be subject to reduction or*
5 *setoff. Each such determination of need shall be published*
6 *in the Federal Register.*

7 “(f) *If a provision described in subsection (e) or a pro-*
8 *vision to the same general effect has been at any time here-*
9 *tofore or is hereafter included or inserted in any such con-*
10 *tract, payments to be made thereafter to an assignee of any*
11 *moneys due or to become due under such contract shall not*
12 *be subject to reduction or setoff for any liability of any na-*
13 *ture of the assignor to the United States or any department*
14 *or agency thereof which arises independently of such con-*
15 *tract, or hereafter for any liability of the assignor on ac-*
16 *count of—*

17 “(1) *renegotiation under any renegotiation stat-*
18 *ute or under any statutory renegotiation article in*
19 *the contract;*

20 “(2) *finances;*

21 “(3) *penalties (which term does not include*
22 *amounts which may be collected or withheld from the*
23 *assignor in accordance with or for failure to comply*
24 *with the terms of the contract); or*

1 *unless a person authorized to certify the request on behalf*
 2 *of the contractor certifies, at the time the request is submit-*
 3 *ted, that—*

4 “(1) *the request is made in good faith, and*

5 “(2) *the supporting data are accurate and com-*
 6 *plete to the best of that person’s knowledge and be-*
 7 *lief.”.*

8 (2) *CLERICAL AMENDMENT.—The table of sec-*
 9 *tions at the beginning of chapter 141 of such title is*
 10 *amended by striking out the item relating to section*
 11 *2410 and inserting in lieu thereof the following:*

“2410. Requests for equitable adjustment or other relief: certification.”.

12 (b) *RESTRICTION ON LEGISLATIVE PAYMENT OF*
 13 *CLAIMS.—Section 2410 of title 10, United States Code, as*
 14 *amended by subsection (a), is further amended by adding*
 15 *at the end the following new subsection:*

16 “(b) *RESTRICTION ON LEGISLATIVE PAYMENT OF*
 17 *CLAIMS.—In the case of a contract of an agency named in*
 18 *section 2303(a) of this title, no provision of a law enacted*
 19 *after September 30, 1994, that directs the payment of a par-*
 20 *ticular claim under such contract, a particular request for*
 21 *equitable adjustment to any term of such contract, or a par-*
 22 *ticular request for relief under Public Law 85–804 (50*
 23 *U.S.C. 1431 et seq.) regarding such contract may be imple-*
 24 *mented unless such provision of law—*

25 “(1) *specifically refers to this subsection; and*

1 “(2) specifically states that this subsection does
2 not apply with respect to the payment directed by
3 that provision of law.”.

4 (c) *DEFINITION.*—Section 2410, as amended by sub-
5 sections (a) and (b), is further amended by adding at the
6 end the following:

7 “(c) *DEFINITION.*—In this section, the term ‘simplified
8 acquisition threshold’ has the meaning given that term in
9 section 2302(4) of this title.”.

10 (d) *REPEAL OF RELATED PROVISIONS.*—

11 (1) *CERTIFICATION REGULATIONS FOR CONTRACT*
12 *CLAIMS EXCEEDING \$100,000.*—

13 (A) *REPEAL.*—Section 2410e of title 10,
14 *United States Code, is repealed.*

15 (B) *CLERICAL AMENDMENT.*—The table of
16 sections at the beginning of chapter 141 of such
17 title is amended by striking out the item relating
18 to section 2410e.

19 (2) *CONFORMING REPEAL.*—Section 813(b) of the
20 *National Defense Authorization Act for Fiscal Year*
21 *1993 (Public Law 102–484, 106 Stat. 2453), is re-*
22 *pealed.*

23 **SEC. 2502. SHIPBUILDING CLAIMS.**

24 (a) *LIMITATION ON PERIOD FOR SUBMISSION.*—

1 (1) *INCREASED PERIOD.*—Subsection (a) of sec-
2 tion 2405 of title 10, United States Code, is amend-
3 ed—

4 (A) by striking out “after December 7,
5 1983,” and inserting in lieu thereof “on or after
6 the date of the enactment of the Federal Acquisi-
7 tion Streamlining Act of 1994”; and

8 (B) by striking out “18 months” and insert-
9 ing in lieu thereof “6 years”.

10 (2) *SAVINGS PROVISION.*—Notwithstanding the
11 6-year period provided in subsection (a) of section
12 2405 of title 10, United States Code, as amended by
13 paragraph (1), the period applicable under such sub-
14 section in the case of a shipbuilding contract entered
15 into after December 7, 1983, and before the date of the
16 enactment of the Federal Acquisition Streamlining
17 Act of 1994 shall continue to be 18 months.

18 (b) *RESUBMISSION WITH CORRECTED CERTIFI-*
19 *CATION.*—Subsection (c) of such section is repealed.

20 **PART II—ACQUISITIONS GENERALLY**

21 **SEC. 2551. CLAIMS JURISDICTION OF UNITED STATES DIS-**
22 **TRICT COURTS AND THE UNITED STATES**
23 **COURT OF FEDERAL CLAIMS.**

24 (a) *CONCURRENT JURISDICTION OF UNITED STATES*
25 *DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.*—

1 *Subsection (a) of section 1346 of title 28, United States*
2 *Code, is amended to read as follows:*

3 “(a)(1) *The district courts shall have original jurisdic-*
4 *tion, concurrent with the United States Court of Federal*
5 *Claims, of any civil action against the United States for*
6 *the recovery of any internal-revenue tax alleged to have been*
7 *erroneously or illegally assessed or collected, or any penalty*
8 *claimed to have been collected without authority or any sum*
9 *alleged to have been excessive or in any manner wrongfully*
10 *collected under the internal-revenue laws.*

11 “(2)(A) *Except as provided in subparagraph (B), the*
12 *district courts shall have original jurisdiction, concurrent*
13 *with the United States Court of Federal Claims, of any*
14 *other civil action or claim against the United States, not*
15 *exceeding \$10,000 in amount, founded either upon the Con-*
16 *stitution, or any Act of Congress, or any regulation of an*
17 *executive department, or upon any express or implied con-*
18 *tract with the United States, or for liquidated or unliqui-*
19 *dated damages in cases not sounding in tort.*

20 “(B) *The district courts shall not have jurisdiction*
21 *over any civil action or claim against the United States*
22 *or any Federal entity which relates in any manner to a*
23 *contract to which the Contract Disputes Act of 1978 (41*
24 *U.S.C. 601 et seq.) applies, including a claim that seeks*
25 *to establish the existence or nonexistence of such a contract,*

1 *seeks to establish that such a contract is void, or seeks to*
2 *determine and construe the terms of such a contract. The*
3 *district courts do not have jurisdiction over any civil action*
4 *or claim described in the preceding sentence pursuant to*
5 *section 1331, 1334, or 1346(a)(2)(B) of this title, any provi-*
6 *sion of law giving a Federal entity the right to sue or be*
7 *sued in its own name, or any other provision of law.”.*

8 **(b) JURISDICTION OF THE UNITED STATES COURT OF**
9 *FEDERAL CLAIMS UNDER THE TUCKER ACT.—Section*
10 *1491 of title 28, United States Code, as amended by section*
11 *1422, is further amended by inserting after subsection (c)*
12 *the following:*

13 *“(d)(1) The United States Court of Federal Claims*
14 *shall have jurisdiction over any civil action or claim*
15 *against the United States which relates in any manner to*
16 *a contract to which the Contract Disputes Act of 1978 (41*
17 *U.S.C. 601 et seq.) applies, including a civil action or claim*
18 *that seeks to establish the existence or nonexistence of such*
19 *a contract, seeks to establish that such contract is void, or*
20 *seeks to determine and construe the terms of any such con-*
21 *tract.*

22 *“(2) The jurisdiction of the United States Court of*
23 *Federal Claims is, pursuant to section 1346(a)(2)(B) of this*
24 *title, exclusive as to the district courts of the United*
25 *States.”.*

1 **SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.**

2 (a) *PERIOD FOR FILING CLAIMS.*—

3 (1) *SIX-YEAR LIMITATION.*—Section 6 of the Con-
4 tract Disputes Act of 1978 (41 U.S.C. 605) is amend-
5 ed in subsection (a) by inserting after the second sen-
6 tence the following: “Each claim by a contractor
7 against the government relating to a contract and
8 each claim by the government against a contractor re-
9 lating to a contract shall be submitted within 6 years
10 after the occurrence of the event or events giving rise
11 to the claim. The preceding sentence does not apply
12 to a claim by the government against a contractor
13 that is based on a claim by the contractor involving
14 fraud.”.

15 (2) *LIMITATION ON APPLICABILITY TO EXISTING*
16 *CONTRACTS.*—Notwithstanding the third sentence of
17 section 6(a) of the Contract Disputes Act of 1978, as
18 added by paragraph (1), if a contract in existence on
19 the date of the enactment of this Act requires that a
20 claim referred to in that sentence be submitted earlier
21 than 6 years after the occurrence of the event or
22 events giving rise to the claim, then the claim shall
23 be submitted within the period required by the con-
24 tract. The preceding sentence does not apply to a
25 claim by the Federal Government against a contrac-

1 *tor that is based on a claim by the contractor involv-*
2 *ing fraud.*

3 *(b) INCREASED THRESHOLD FOR CERTIFICATION, DE-*
4 *CISION, AND NOTIFICATION REQUIREMENTS.—Subsection*
5 *(c) of such section is amended by striking out “\$50,000”*
6 *each place it appears and inserting in lieu thereof*
7 *“\$100,000”.*

8 *(c) INCREASED MAXIMUM FOR APPLICABILITY OF AC-*
9 *CELERATED PROCEDURES.—Section 8(f) of the Contract*
10 *Disputes Act of 1978 (41 U.S.C. 607(f)) is amended by*
11 *striking out “\$50,000” in the first sentence and inserting*
12 *in lieu thereof “\$150,000”.*

13 *(d) INCREASED MAXIMUM FOR APPLICABILITY OF*
14 *SMALL CLAIMS PROCEDURE.—Section 9(a) of the Contract*
15 *Disputes Act of 1978 (41 U.S.C. 608(a)) is amended by*
16 *striking out “\$10,000” in the first sentence and inserting*
17 *in lieu thereof “\$50,000”.*

18 *(e) REDUCED PERIOD FOR FILING ACTION IN COURT*
19 *OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41*
20 *U.S.C. 609(a)(3)) is amended by striking out “twelve*
21 *months” and inserting in lieu thereof “90 days”.*

1 **SEC. 2553. EXTENSION OF ALTERNATIVE DISPUTE RESOLU-**
2 **TION AUTHORITY.**

3 *Section 6(e) of the Contracts Disputes Act of 1978 (41*
4 *U.S.C. 605(e)) is amended by striking out “October 1,*
5 *1995” and inserting in lieu thereof “October 1, 1999”.*

6 **SEC. 2554. EXPEDITED RESOLUTION OF CONTRACT ADMIN-**
7 **ISTRATION COMPLAINTS.**

8 (a) *REGULATIONS REQUIRED.*—*The Federal Acquisi-*
9 *tion Regulation shall include provisions that require a con-*
10 *tracting officer—*

11 (1) *to make every reasonable effort to respond in*
12 *writing within 30 days to any written request for a*
13 *contracting officer’s decision with respect to a matter*
14 *relating to the administration of a contract that is re-*
15 *ceived from a small business concern; and*

16 (2) *in the event that the contracting officer is*
17 *unable to render a decision within the 30-day period,*
18 *to transmit to the contractor within such period a*
19 *written notification of a specific date by which the*
20 *contracting officer expects to reach a decision.*

21 (b) *RULE OF CONSTRUCTION.*—*Nothing in this provi-*
22 *sion shall be considered as creating any rights under the*
23 *Contract Disputes Act (41 U.S.C. 601 et seq.).*

24 (c) *DEFINITION.*—*In this section, the term “small busi-*
25 *ness concern” means a business concern that meets the re-*
26 *quirements of section 3(a) of the Small Business Act (15*

1 *U.S.C. 632(a) and the regulations promulgated pursuant*
2 *to that section.*

3 ***TITLE III—SERVICE SPECIFIC***
4 ***AND MAJOR SYSTEMS STATUTES***
5 ***Subtitle A—Major Systems Statutes***

6 ***SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTI-***
7 ***MATES AND MANPOWER ESTIMATES BEFORE***
8 ***DEVELOPMENT OR PRODUCTION.***

9 *(a) CONTENT AND SUBMISSION OF ESTIMATES.—Sec-*
10 *tion 2434 of title 10, United States Code, is amended by*
11 *striking out subsection (b) and inserting in lieu thereof the*
12 *following:*

13 *“(b) REGULATIONS.—The Secretary of Defense shall*
14 *prescribe regulations governing the content and submission*
15 *of the estimates required by subsection (a). The regulations*
16 *shall require—*

17 *“(1) that the independent estimate of the cost of*
18 *a program—*

19 *“(A) be prepared by an office or other en-*
20 *tity that is not under the supervision, direction,*
21 *or control of the military department, Defense*
22 *Agency, or other component of the Department of*
23 *Defense that is directly responsible for carrying*
24 *out the development or acquisition of the pro-*
25 *gram; and*

1 “(B) include all costs of development, pro-
2 curement, and operations and support, without
3 regard to funding source or management control;
4 and

5 “(2) that the manpower estimate include the
6 total personnel required to train for, operate, main-
7 tain, and support the program upon full operational
8 deployment.”.

9 (b) *TERMINOLOGY CORRECTION.*—Subsection (a) of
10 such section is amended by striking out “full-scale engineer-
11 ing development” and inserting in lieu thereof “engineering
12 and manufacturing development”.

13 ***SEC. 3002. ENHANCED PROGRAM STABILITY.***

14 (a) *BASELINE DESCRIPTIONS AND DEVIATION RE-*
15 *PORTING.*—Section 2435 of title 10, United States Code, is
16 amended—

17 (1) in subsection (a)—

18 (A) by striking out paragraph (2); and

19 (B) in paragraph (1)—

20 (i) by striking out “(1)”; and

21 (ii) by redesignating subparagraphs

22 (A) and (B) as paragraphs (1) and (2), re-

23 spectively; and

24 (2) by striking out subsection (b) and inserting

25 in lieu thereof the following:

1 “(b) REGULATIONS.—The Secretary of Defense shall
2 prescribe regulations governing—

3 “(1) the content of baseline descriptions, which
4 shall include the program cost, the program schedule,
5 and a program performance description;

6 “(2) the submission of reports on deviations of a
7 program from the baseline description by the program
8 manager to the Secretary of the military department
9 concerned and the Under Secretary of Defense for Ac-
10 quisition and Technology;

11 “(3) procedures for review of deviation reports
12 within the Department of Defense; and

13 “(4) procedures for submission and approval of
14 revised baseline descriptions.

15 “(c) BASELINE DESCRIPTION REQUIRED BEFORE OB-
16 LIGATION OF FUNDS.—(1) Except as provided in para-
17 graph (2), no amount appropriated or otherwise made
18 available to the Department of Defense may be obligated
19 for a major defense acquisition program before a baseline
20 description for the program is approved in accordance with
21 the procedures prescribed pursuant to subsection (b)(4).

22 “(2) An obligation otherwise prohibited by paragraph
23 (1) may be incurred if approved in advance by the Under
24 Secretary of Defense for Acquisition and Technology.”.

1 (b) *TERMINOLOGY CORRECTION.*—Subsection (a)(1) of
2 such section, as redesignated by subsection (a)(1)(B)(ii), is
3 amended by striking out “full-scale engineering develop-
4 ment” and inserting in lieu thereof “engineering and man-
5 ufacturing development”.

6 **SEC. 3003. REPEAL OF REQUIREMENT TO DESIGNATE CER-**
7 **TAIN MAJOR DEFENSE ACQUISITION PRO-**
8 **GRAMS AS DEFENSE ENTERPRISE PROGRAMS.**

9 Section 809 of the National Defense Authorization Act
10 for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2430
11 note) is amended—

12 (1) by striking out subsection (d); and

13 (2) by redesignating subsections (e), (f), (g), and
14 (h) as subsections (d), (e), (f), and (g), respectively.

15 **SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE**
16 **PROTOTYPING IN MAJOR PROGRAMS.**

17 (a) *REPEAL.*—Section 2438 of title 10, United States
18 Code, is repealed.

19 (b) *CLERICAL AMENDMENT.*—The table of sections at
20 the beginning of chapter 144 of such title is amended by
21 striking out the item relating to section 2438.

1 **SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE**
2 **ALTERNATIVE SOURCES IN MAJOR PRO-**
3 **GRAMS.**

4 (a) *REPEAL.*—Section 2439 of title 10, United States
5 Code, is repealed.

6 (b) *CLERICAL AMENDMENT.*—The table of sections at
7 the beginning of chapter 144 of such title is amended by
8 striking out the item relating to section 2439.

9 **Subtitle B—Testing Statutes**

10 **SEC. 3011. DIRECTOR OF OPERATIONAL TEST AND EVALUA-**
11 **TION TO REPORT DIRECTLY TO SECRETARY**
12 **OF DEFENSE.**

13 Section 139(c) of title 10, United States Code, is
14 amended by inserting after “(c)” the following: “The Direc-
15 tor reports directly, without intervening review or approval,
16 to the Secretary of Defense and Deputy Secretary of Defense
17 personally.”.

18 **SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPER-**
19 **ATIONAL TEST AND EVALUATION FOR LIVE**
20 **FIRE TESTING.**

21 (a) *CONDUCT OF LIVE FIRE TESTING.*—Subsection (b)
22 of section 139 of title 10, United States Code, is amended—

23 (1) by striking out “and” at the end of para-
24 graph (4);

25 (2) by striking out the period at the end of para-
26 graph (5) and inserting in lieu thereof “; and”; and

1 (3) by adding at the end the following new para-
2 graph:

3 “(6) conduct the live fire testing activities of the
4 Department of Defense provided for under section
5 2366 of this title.”.

6 (b) ANNUAL REPORT ON LIVE FIRE TESTING.—Sub-
7 section (f) of such section is amended by inserting “(includ-
8 ing live fire testing activities)” in the first sentence after
9 “operational test and evaluation activities”.

10 **SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF**

11 **ANNUAL REPORT ON OPERATIONAL TEST**

12 **AND EVALUATION.**

13 Section 139(f) of title 10, United States Code, is
14 amended by inserting after the second sentence the following
15 new sentence: “If the Director submits the report to Con-
16 gress in a classified form, the Director shall concurrently
17 submit an unclassified version of the report to Congress.”.

18 **Subtitle C—Service Specific Laws**

19 **SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CER-**

20 **TAIN RESERVE COMPONENTS.**

21 Section 279 of title 10, United States Code, is amend-
22 ed—

23 (1) by striking out “Notwithstanding” and in-
24 serting in lieu thereof “(a) ACCEPTANCE BY SEC-

1 (C) by striking out “(49 U.S.C. 1301)” and
2 inserting in lieu thereof “(49 U.S.C. App.
3 1301)”;

4 (2) in paragraph (2), by striking out “passenger-
5 cargo” and inserting in lieu thereof “passenger
6 cargo”;

7 (3) in paragraph (3), by striking out “cargo-ca-
8 pable” and inserting in lieu thereof “cargo capable”;

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

11 “(5) The term ‘cargo convertible aircraft’ means
12 a passenger aircraft equipped or designed so that all
13 or substantially all of the main deck of the aircraft
14 can be readily converted for the carriage of property
15 or mail.”;

16 (5) by striking out paragraph (6);

17 (6) by redesignating paragraph (7) as para-
18 graph (6);

19 (7) by redesignating paragraph (8) as para-
20 graph (7) and—

21 (A) in subparagraph (A) of such paragraph,
22 by inserting “under section 9512 of this title”
23 after “and who contracts with the Secretary”;

24 (B) by striking out “or” at the end of such
25 subparagraph (A); and

1 (C) by inserting before the period at the end
2 of such paragraph the following: “, or (C) who
3 owns or controls existing aircraft, or will own or
4 control new aircraft, and who contractually com-
5 mits all or some of such aircraft to the Civil Re-
6 serve Air Fleet”;

7 (8) by redesignating paragraphs (9), (10), (11),
8 and (12) as paragraphs (8), (9), (10), and (11), re-
9 spectively; and

10 (9) in paragraph (11), as so redesignated—

11 (A) by striking out “interoperability” and
12 inserting in lieu thereof “compatibility”; and

13 (B) by striking out “a cargo-convertible,
14 cargo-capable, or passenger-cargo combined air-
15 craft” and inserting in lieu thereof “an
16 aeromedical aircraft or a cargo convertible, cargo
17 capable, or passenger cargo combined aircraft”.

18 (b) CONSOLIDATION OF PROVISIONS RELATING TO
19 CONTRACTUAL COMMITMENT OF AIRCRAFT.—Chapter 931
20 of such title is amended—

21 (1) by redesignating subsections (b) and (c) of
22 section 9512 as subsections (c) and (d), respectively;

23 (2) by redesignating subsection (a) of section
24 9513 as subsection (b), transferring such subsection

1 *(as so redesignated) to section 9512, and inserting*
2 *such subsection after subsection (a);*

3 *(3) 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 *(4) in subsection (c) of section 9512, as redesign-*
7 *ated by paragraph (1), by striking out “the terms*
8 *required by section 9513 of this title and”;*

9 *(5) in subsection (e) of section 9512, as redesign-*
10 *ated and transferred to such section by paragraph*
11 *(3), by striking out “under section 9512 of this title”*
12 *and inserting in lieu thereof “entered into under this*
13 *section”;* and

14 *(6) by striking out the heading of section 9513.*

15 (c) *USE OF MILITARY INSTALLATIONS BY CONTRAC-*
16 *TORS.—*

17 (1) *AUTHORITY.—Such chapter, as amended by*
18 *subsection (b), is further amended by adding at the*
19 *end the following new section 9513:*

20 **“§9513. Use of military installations by Civil Reserve**
21 **Air Fleet contractors**

22 “(a) *CONTRACT AUTHORITY.—(1) The Secretary of the*
23 *Air Force—*

24 “(A) *may, by contract entered into with any*
25 *contractor, authorize such contractor to use one or*

1 *more Air Force installations designated by the Sec-*
2 *retary; and*

3 *“(B) with the consent of the Secretary of another*
4 *military department, may, by contract entered into*
5 *with any contractor, authorize the contractor to use*
6 *one or more installations, designated by the Secretary*
7 *of the Air Force, that is under the jurisdiction of the*
8 *Secretary of such other military department.*

9 *“(2) The Secretary of the Air Force may include in*
10 *the contract such terms and conditions as the Secretary de-*
11 *termines appropriate to promote the national defense or to*
12 *protect the interests of the United States.*

13 *“(b) PURPOSES OF USE.—A contract entered into*
14 *under subsection (a) may authorize use of a designated in-*
15 *stallation as a weather alternate, a service stop not involv-*
16 *ing the enplaning or deplaning of passengers or cargo, or,*
17 *in the case of an installation within the United States, for*
18 *other commercial purposes. Notwithstanding any other pro-*
19 *vision of the law, the Secretary may establish different levels*
20 *and types of uses for different installations for commercial*
21 *operations not required by the Department of Defense and*
22 *may provide in contracts under subsection (a) for different*
23 *levels and types of uses by different contractors.*

24 *“(c) DISPOSITION OF PAYMENTS FOR USE.—Notwith-*
25 *standing any other provision of law, amounts collected from*

1 *the contractor for landing fees, services, supplies, or other*
2 *charges authorized to be collected under the contract shall*
3 *be credited to the appropriations of the armed forces having*
4 *jurisdiction over the military installation to which the con-*
5 *tract pertains. Amounts so credited to an appropriation*
6 *shall be available for obligation for the same period as the*
7 *appropriation to which credited.*

8 “(d) *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 United*
11 *States from all actions, suits, or claims of any sort resulting*
12 *from, relating to, or arising out of any activities conducted,*
13 *or services or supplies furnished, in connection with the*
14 *contract.*

15 “(e) *RESERVATION OF RIGHT TO EXCLUDE CONTRAC-*
16 *TOR.*—A contract entered into under subsection (a) shall
17 *provide that the Secretary or, in the case of an installation*
18 *under the jurisdiction of an armed force other than the Air*
19 *Force, the Secretary concerned may at any time and with-*
20 *out prior notice deny access to an installation designated*
21 *under the contract if military exigencies require such ac-*
22 *tion.”.*

23 (2) *CLERICAL AMENDMENT.*—The table of sec-
24 *tions at the beginning of such chapter is amended by*

1 *striking out the item relating to section 9513 and in-*
2 *serting in lieu thereof the following:*

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

3 **SEC. 3024. EXCHANGE OF PERSONNEL.**

4 (a) *EXCHANGE AUTHORITY.*—Subchapter II of chapter
5 138 of title 10, United States Code, is amended by adding
6 at the end the following new section:

7 **“§ 2350k. Exchange of personnel**

8 “(a) *INTERNATIONAL EXCHANGE AGREEMENTS AU-*
9 *THORIZED.*—Under regulations prescribed by the Secretary
10 of Defense, the Secretary and the secretaries of the military
11 departments are each authorized to enter into agreements
12 with the governments of foreign countries for the exchange
13 of military and civilian personnel of the Department of De-
14 fense and military and civilian personnel of the defense de-
15 partments or ministries of such foreign governments.

16 “(b) *ASSIGNMENT OF PERSONNEL.*—Pursuant to such
17 agreements, personnel of the foreign defense departments or
18 ministries may be assigned to positions in the Department
19 of Defense, and personnel of the Department of Defense may
20 be assigned to positions in foreign defense departments or
21 ministries. Agreements for the exchange of personnel en-
22 gaged in research and development activities may provide
23 for assignments to positions in private industry that sup-
24 port the defense departments or ministries. The specific po-
25 sitions and the individuals to be assigned must be accept-

1 *able to both the sending government and the host govern-*
2 *ment.*

3 “(c) *RECIPROCITY OF PERSONNEL QUALIFICATIONS*
4 *REQUIRED.*—*Each government shall be required under an*
5 *agreement authorized by subsection (a) to provide personnel*
6 *having qualifications, training, and skills that are essen-*
7 *tially equal to those of the personnel provided by the other*
8 *government.*

9 “(d) *PAYMENT OF PERSONNEL COSTS.*—*Each govern-*
10 *ment shall pay the salary, per diem, cost of living, travel,*
11 *cost of language or other training, and other costs (except*
12 *for cost of temporary duty directed by the host government*
13 *and costs incident to the use of host government facilities*
14 *in the performance of assigned duties) for its own personnel*
15 *in accordance with the laws and regulations of such govern-*
16 *ment that pertain to such matters.”.*

17 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
18 *the beginning of subchapter II of such chapter is amended*
19 *by adding at the end the following new item:*

“2350k. Exchange of personnel.”.

20 **SEC. 3025. SCIENTIFIC INVESTIGATION AND RESEARCH FOR**
21 **THE NAVY.**

22 (a) *REPEAL.*—*Section 7203 of title 10, United States*
23 *Code, is repealed.*

1 (b) *CLERICAL AMENDMENT.*—The table of sections at
2 the beginning of chapter 631 of such title is amended by
3 striking out the item relating to section 7203.

4 **SEC. 3026. CONSTRUCTION OF COMBATANT AND ESCORT**
5 **VESSELS AND ASSIGNMENT OF VESSEL**
6 **PROJECTS.**

7 (a) *REPEAL OF OBSOLETE AND INTERNALLY INCON-*
8 *SISTENT PROVISIONS.*—Section 7299a of title 10, United
9 States Code, is amended—

10 (1) by striking out subsection (a); and

11 (2) by redesignating subsections (b) and (c) as
12 subsections (a) and (b), respectively.

13 (b) *CONFORMING AMENDMENT.*—Subsection (b) of such
14 section, as redesignated by subsection (a)(2), is amended in
15 paragraph (2) by striking out “subsection (a) or”.

16 **SEC. 3027. REPEAL OF REQUIREMENT FOR CONSTRUCTION**
17 **OF VESSELS ON PACIFIC COAST.**

18 (a) *REPEAL.*—Section 7302 of title 10, United States
19 Code, is repealed.

20 (b) *CLERICAL AMENDMENT.*—The table of sections at
21 the beginning of chapter 633 of such title is amended by
22 striking out the item relating to section 7302.

1 **SEC. 3028. AUTHORITY TO TRANSFER BY GIFT A VESSEL**
2 **STRICKEN FROM NAVAL VESSEL REGISTER.**

3 *Section 7306(a)(1) of title 10, United States Code, is*
4 *amended by inserting “Territory,” after “State,”.*

5 **SEC. 3029. NAVAL SALVAGE FACILITIES.**

6 *Chapter 637 of title 10, United States Code, is amend-*
7 *ed—*

8 *(1) in section 7361—*

9 *(A) in subsection (a), by inserting “AU-*
10 *THORITY TO PROVIDE FACILITIES BY CONTRACT*
11 *OR OTHERWISE.—” after “(a)”;*

12 *(B) in subsection (b), by inserting “CON-*
13 *TRACTS AFFECTING THE DEPARTMENT OF*
14 *TRANSPORTATION.—” after “(b)”;* and

15 *(C) by striking out subsection (c) and in-*
16 *serting in lieu thereof the following new sub-*
17 *section (c):*

18 *“(c) LIMITATION ON TERM CONTRACTS.—Term con-*
19 *tracts may be entered into for purposes of this section only*
20 *after—*

21 *“(1) it has been demonstrated to the satisfaction*
22 *of the Secretary of the Navy that available commer-*
23 *cial salvage facilities are inadequate to meet national*
24 *defense requirements; and*

1 “(2) the Secretary of the Navy determines that
2 adequate public notice of intent to exercise the author-
3 ity under this subsection has been provided.”;

4 (2) by designating the text of section 7362 as
5 subsection (d) and transferring such text, as so des-
6 ignated, to the end of section 7361 of title 10, United
7 States Code;

8 (3) in subsection (d) of section 7361 of such title,
9 as so designated and transferred, by inserting before
10 “The Secretary” the following: “COMMERCIAL USE OF
11 NAVAL VESSELS AND EQUIPMENT.—”;

12 (4) by designating the text of section 7363 as
13 subsection (e) and transferring such text, as so des-
14 ignated, to the end of section 7361 of title 10, United
15 States Code;

16 (5) in subsection (e) of section 7361 of such title,
17 as so designated and transferred, by inserting before
18 “Before any salvage vessel” the following: “CONDI-
19 TIONS FOR TRANSFER OF EQUIPMENT.—”;

20 (6) by designating the text of section 7365 as
21 subsection (f) and transferring such text, as so des-
22 ignated, to the end of section 7361 of title 10, United
23 States Code;

24 (7) in subsection (f) of section 7361 of such title,
25 as so designated and transferred, by inserting before

1 *“The Secretary” the following: “SETTLEMENT OF*
2 *CLAIMS.—”;*

3 (8) *by designating the text of section 7367 as*
4 *subsection (g) and transferring such text, as so des-*
5 *ignated, to the end of section 7361 of title 10, United*
6 *States Code;*

7 (9) *in subsection (g) of section 7361 of such title,*
8 *as so designated and transferred—*

9 (A) *by inserting before “Money received”*
10 *the following: “DISPOSITION OF RECEIPTS.—”;*
11 *and*

12 (B) *by striking out “this chapter” in the*
13 *first sentence and inserting in lieu thereof “this*
14 *section”;*

15 (10) *by striking out the section headings for sec-*
16 *tions 7362, 7363, 7365, and 7367;*

17 (11) *by striking out the heading for section 7361*
18 *and inserting in lieu thereof the following:*

19 ***“§ 7361. Navy support for salvage operations”;***

20 *and*

21 (12) *in the table of sections at the beginning of*
22 *such chapter—*

23 (A) *by striking out the item relating to sec-*
24 *tion 7361 and inserting in lieu thereof the fol-*
25 *lowing:*

“7361. Navy support for salvage operations.”;

1 *and*

2 *(B) by striking out the items relating to sec-*
3 *tions 7362, 7363, 7365, and 7367.*

4 ***Subtitle D—Department of Defense***
5 ***Commercial and Industrial Ac-***
6 ***tivities***

7 ***SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.***

8 *(a) CONSOLIDATION AND REVISION OF AUTHORITY.—*

9 *(1) AUTHORITY.—Subchapter V of chapter 148 of*
10 *title 10, United States Code is amended by adding at*
11 *the end the following:*

12 ***“§ 2542. Factories and arsenals: manufacture at***

13 *“(a) The Secretary of Defense or the Secretary of a*
14 *military department may have supplies needed for the De-*
15 *partment of Defense or such military department, as the*
16 *case may be, made in factories or arsenals owned by the*
17 *United States.*

18 *“(b) The Secretary of Defense or the Secretary of the*
19 *military department concerned may abolish any United*
20 *States arsenal that such Secretary considers unnecessary.”.*

21 *(2) TECHNICAL AMENDMENT.—The table of sec-*
22 *tions at the beginning of subchapter V of such chapter*
23 *is amended by adding at the end the following new*
24 *item:*

“2542. Factories and arsenals: manufacture at.”.

25 *(b) REPEAL OF SUPERSEDED AUTHORITY.—*

1 (1) *ARMY AUTHORITY.*—

2 (A) *REPEAL.*—Section 4532 of title 10,
3 *United States Code, is repealed.*

4 (B) *CLERICAL AMENDMENT.*—The table of
5 sections at the beginning of chapter 433 of such
6 title is amended by striking out the item relating
7 to section 4532.

8 (2) *AIR FORCE AUTHORITY.*—

9 (A) *REPEAL.*—Section 9532 of title 10,
10 *United States Code, is repealed.*

11 (B) *CLERICAL AMENDMENT.*—The table of
12 sections at the beginning of chapter 933 of such
13 title is amended by striking out the item relating
14 to section 9532.

15 **SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED**

16 **ADVISORY AND ASSISTANCE SERVICES.**

17 (a) *FUNDING TO BE IDENTIFIED IN BUDGET.*—Sec-
18 tion 1105 of title 31, *United States Code, is amended by*
19 *adding at the end the following new subsection:*

20 “(g)(1) *The Director of the Office of Management and*
21 *Budget shall establish the funding for advisory and assist-*
22 *ance services for each department and agency as a separate*
23 *object class in each budget annually submitted to the Con-*
24 *gress under this section.*

1 “(2)(A) In paragraph (1), except as provided in sub-
2 paragraph (B), the term ‘advisory and assistance services’
3 means the following services when provided by nongovern-
4 mental sources:

5 “(i) Management and professional support serv-
6 ices.

7 “(ii) Studies, analyses, and evaluations.

8 “(iii) Engineering and technical services.

9 “(B) In paragraph (1), the term ‘advisory and assist-
10 ance services’ does not include the following services:

11 “(i) Routine automated data processing and tele-
12 communications services (as defined in the Federal
13 Information Resources Management Regulation pre-
14 scribed by the Administrator of General Services) un-
15 less such services are an integral part of a contract
16 for the procurement of advisory and assistance serv-
17 ices.

18 “(ii) Architectural and engineering services.

19 “(iii) Technical support of research and develop-
20 ment activities.

21 “(iv) Research on basic mathematics or medical,
22 biological, physical, social, psychological, or other
23 phenomena.”.

24 (b) REPEAL OF SOURCE LAW.—Section 512 of Public
25 Law 102–394 (106 Stat. 1826) is repealed.

1 (c) *REPEAL OF SUPERSEDED PROVISIONS.*—

2 (1) *TITLE 10.*—

3 (A) *REPEAL.*—Section 2212 of title 10,
4 *United States Code, is repealed.*

5 (B) *CLERICAL AMENDMENT.*—The table of
6 *sections at the beginning of chapter 131 of such*
7 *title is amended by striking out the item relating*
8 *to section 2212.*

9 (2) *TITLE 31.*—

10 (A) *REPEAL.*—Section 1114 of title 31,
11 *United States Code, is repealed.*

12 (B) *CLERICAL AMENDMENT.*—The table of
13 *sections at the beginning of chapter 11 of such*
14 *title is amended by striking out the item relating*
15 *to section 1114.*

16 ***Subtitle E—Fuel- and Energy-***
17 ***Related Laws***

18 ***SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS***

19 ***FOR STORAGE, HANDLING, OR DISTRIBUTION.***

20 *Section 2388(a) of title 10, United States Code, is*
21 *amended by striking out “liquid fuels and natural gas” and*
22 *inserting in lieu thereof “liquid fuels or natural gas”.*

1 **Subtitle F—Fiscal Statutes**

2 **SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DE-**
3 **PARTMENT TO COVER OBLIGATIONS OF AN-**
4 **OTHER AGENCY OF DEPARTMENT OF DE-**
5 **FENSE.**

6 *Subsection (c)(2) of section 3321 of title 31, United*
7 *States Code, is amended by striking out “military depart-*
8 *ments of the” and inserting in lieu thereof “The”.*

9 **Subtitle G—Miscellaneous**

10 **SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.**

11 *Section 2202 of title 10, United States Code, is amend-*
12 *ed to read as follows:*

13 **“§ 2202. Obligation of funds: limitation**

14 *“The Secretary of Defense shall prescribe regulations*
15 *governing the performance within the Department of De-*
16 *fense of the procurement, production, warehousing, and*
17 *supply distribution functions, and related functions, of the*
18 *Department of Defense.”.*

19 **SEC. 3082. REPEAL OF REQUIREMENTS REGARDING PROD-**
20 **UCT EVALUATION ACTIVITIES.**

21 *(a) REPEAL.—Section 2369 of title 10, United States*
22 *Code, is repealed.*

23 *(b) CLERICAL AMENDMENT.—The table of sections at*
24 *the beginning of chapter 139 of such title is amended by*
25 *striking out the item related to section 2369.*

1 **SEC. 3083. CODIFICATION AND REVISION OF LIMITATION**
2 **ON LEASE OF VESSELS, AIRCRAFT, AND VEHI-**
3 **CLES.**

4 (a) *LIMITATION.*—

5 (1) *IN GENERAL.*—Chapter 141 of title 10,
6 *United States Code, is amended by adding at the end*
7 *the following new section:*

8 **“§ 2410l. Lease of vessels, aircraft, and vehicles**

9 *“The head of an agency named in paragraph (1), (2),*
10 *(3), or (4) of section 2303(a) of this title may not enter*
11 *into any contract with a term of 18 months or more, or*
12 *extend or renew any contract for a term of 18 months or*
13 *more, for any vessel, aircraft, or vehicle, through a lease,*
14 *charter, or similar agreement without previously having*
15 *considered all costs of such lease (including estimated termi-*
16 *nation liability) and determined in writing that such lease*
17 *is in the best interest of the Government.”.*

18 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
19 *tions at the beginning of such chapter is amended by*
20 *adding at the end the following:*

“2410l. Lease of vessels, aircraft, and vehicles.”.

21 (b) *REPEAL OF SUPERSEDED PROVISION.*—*Section*
22 *9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.*
23 *2401 note) is repealed.*

1 **SEC. 3084. SOFT DRINK SUPPLIES FOR EXCHANGE STORES.**

2 *Section 2424 of title 10, United States Code, is amend-*
3 *ed by adding at the end the following new subsection:*

4 *“(c) Paragraphs (1) and (2) of subsection (b) do not*
5 *apply to contracts for the procurement of soft drinks that*
6 *are manufactured in the United States. The Secretary of*
7 *Defense shall prescribe in regulations the standards and*
8 *procedures for determining whether a particular drink is*
9 *a soft drink and whether the drink was manufactured in*
10 *the United States.”.*

11 **SEC. 3085. REPEAL OF PREFERENCE FOR RECYCLED TONER**
12 **CARTRIDGES.**

13 *The following provisions of law, relating to a pref-*
14 *erence for procurement of recycled toner cartridges, are re-*
15 *pealed:*

16 *(1) Section 630 of Public Law 102–393 (106*
17 *Stat. 1773) and the provision of law set out in quotes*
18 *in that section (42 U.S.C. 6962(j)).*

19 *(2) Section 401 of Public Law 103–123 (107*
20 *Stat. 1238).*

1 **TITLE IV—SIMPLIFIED ACQUISITION**
2 **THRESHOLD AND SOCIOECONOMIC,**
3 **SMALL BUSINESS, AND MISCELLANEOUS**
4 **LAWS**

5 **Subtitle A—Simplified Acquisition**
6 **Threshold**

7 **PART I—ESTABLISHMENT OF THRESHOLD**

8 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.**

9
10 (a) *TERM DEFINED.*—Section 4(11) of the Office of
11 Federal Procurement Policy Act (41 U.S.C. 403(11)) is
12 amended to read as follows:

13 “(11) The term ‘simplified acquisition threshold’
14 means \$100,000.”

15 (b) *INTERIM REPORTING RULE.*—Until October 1,
16 1999, procuring activities shall continue to report procure-
17 ment awards with a dollar value of at least \$25,000, but
18 less than \$100,000, in conformity with the procedures for
19 the reporting of a contract award in excess of \$25,000 that
20 were in effect on October 1, 1992.

21 **PART II—SIMPLIFICATION OF PROCEDURES**

22 **SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.**

23 The Office of Federal Procurement Policy Act (41
24 U.S.C. 401 et seq.) is amended by adding at the end the
25 following new section:

1 *“SIMPLIFIED ACQUISITION PROCEDURES*

2 *“SEC. 29. (a) In order to promote efficiency and econ-*
3 *omy in contracting and to avoid unnecessary burdens for*
4 *agencies and contractors, the Federal Acquisition Regula-*
5 *tion shall provide for special simplified procedures for con-*
6 *tracts for acquisition of property and services that are not*
7 *in excess of the simplified acquisition threshold.*

8 *“(b) Regulations prescribed pursuant to subsection (a)*
9 *shall include the following provisions:*

10 *“(1) A provision that a contract with an antici-*
11 *ipated value not in excess of \$2,500 is not subject to*
12 *section 15(j) of the Small Business Act (15 U.S.C.*
13 *644(j)) and section 2 of title III of the Act of March*
14 *3, 1933 (commonly known as the ‘Buy America Act’)*
15 *(41 U.S.C. 10a et seq.).*

16 *“(2) A provision that a civilian or military offi-*
17 *cial, or employee of an agency, whose contracting au-*
18 *thority does not exceed \$2,500 is not a procurement*
19 *official for the purposes of section 27 of this Act.*

20 *“(3) A provision that a purchase not in excess*
21 *of \$2,500 may be made without obtaining competitive*
22 *quotations if the contracting officer determines that*
23 *the price for the purchase is reasonable.*

1 “(4) A requirement that purchases not in excess
2 of \$2,500 be distributed equitably among qualified
3 suppliers.

4 “(c) A proposed purchase or contract for an amount
5 above the simplified acquisition threshold may not be di-
6 vided into several purchases or contracts for lesser amounts
7 in order to use the simplified acquisition procedures re-
8 quired by subsection (a).

9 “(d) In using simplified acquisition procedures, the
10 head of an executive agency shall promote competition to
11 the maximum extent practicable.”.

12 **SEC. 4012. SMALL BUSINESS RESERVATION.**

13 Section 15(j) of the Small Business Act (15 U.S.C.
14 644(j)) is amended to read as follows:

15 “(j)(1) Each contract for the purchase of goods and
16 services that has an anticipated value in excess of \$2,500
17 but not in excess of the simplified acquisition threshold and
18 that is subject to simplified acquisition procedures pre-
19 scribed pursuant to section 29 of the Office of Federal Pro-
20 curement Policy Act shall be reserved exclusively for small
21 business concerns unless the contracting officer is unable to
22 obtain offers from two or more small business concerns that
23 are competitive with market prices and are competitive
24 with regard to the quality and delivery of the goods or serv-
25 ices being purchased.

1 “(2) In carrying out paragraph (1), a contracting offi-
2 cer shall consider a responsive offer timely received from
3 an eligible small business offeror.

4 “(3) Nothing in paragraph (1) shall be construed as
5 precluding an award of a contract with a value not in ex-
6 cess of the simplified acquisition threshold under the au-
7 thority of section 8(a) of this Act, section 2323 of title 10,
8 United States Code, or section 712 of the Business Oppor-
9 tunity Development Reform Act of 1988 (Public Law 100-
10 656; 15 U.S.C. 644 note).”.

11 **SEC. 4013. FAST PAYMENT UNDER SIMPLIFIED ACQUI-**
12 **SITION PROCEDURES.**

13 (a) *PAYMENT PROCEDURES.*—The simplified acquisi-
14 tion procedures described in section 29(a) of the Office of
15 Federal Procurement Policy Act (as added by section 4011)
16 shall provide for use of the payment terms described in sub-
17 section (b), and for the disbursement of payment through
18 electronic fund transfer, whenever circumstances permit.

19 (b) *REQUIRED PAYMENT TERMS.*—The payment terms
20 for a purchase made pursuant to simplified acquisition pro-
21 cedures shall require payment, in accordance with the pro-
22 visions of chapter 39 of title 31, United States Code, within
23 15 days after the date of the receipt of a proper invoice
24 for products delivered or services performed, if—

1 (1) *in the case of a purchase of property, title to*
2 *the property will vest in the Government upon deliv-*
3 *ery of the property to the Government or to a common*
4 *carrier; and*

5 (2) *in the case of property or services for which*
6 *payment is due before the Government's acceptance of*
7 *the property or services, the vendor provides commer-*
8 *cial or other appropriate warranties assuring that the*
9 *property or services purchased conform to the require-*
10 *ments set forth in the Government's purchase offer.*

11 **SEC. 4014. PROCUREMENT NOTICE.**

12 (a) *CONTINUATION OF EXISTING NOTICE THRESH-*
13 *OLDS.—Subsection (a) of section 18 of the Office of Federal*
14 *Procurement Policy Act (41 U.S.C. 416) is amended—*

15 (1) *in paragraph (1), by striking out “the small*
16 *purchase threshold” each place it appears and insert-*
17 *ing in lieu thereof “\$25,000”; and*

18 (2) *in paragraph (3)(B), by inserting after*
19 *“(B)” the following: “in the case of a contract or*
20 *order expected to exceed the simplified acquisition*
21 *threshold.”.*

22 (b) *CONTENT OF NOTICE.—Subsection (b) of such sec-*
23 *tion is amended—*

24 (1) *by striking out “and” at the end of para-*
25 *graph (4);*

1 (2) by striking out the period at the end of para-
2 graph (5) and inserting in lieu thereof a semicolon;
3 and

4 (3) by adding at the end the following:

5 “(6) in the case of a contract in an amount esti-
6 mated to exceed \$25,000 but not to exceed the sim-
7 plified acquisition threshold—

8 “(A) a description of the procedures to be
9 used in awarding the contract; and

10 “(B) a statement specifying the periods for
11 prospective offerors and the contracting officer to
12 take the necessary preaward and award ac-
13 tions.”.

14 (c) NOTICE UNDER THE SMALL BUSINESS ACT.—

15 (1) CONTINUATION OF EXISTING NOTICE
16 THRESHOLDS.—Subsection (e) of section 8 of the
17 Small Business Act (15 U.S.C. 637) is amended—

18 (A) in paragraph (1), by striking out “the
19 small purchase threshold” each place it appears
20 and inserting in lieu thereof “\$25,000”; and

21 (B) in paragraph (3)(B), by inserting after
22 “(B)” the following: “in the case of a contract or
23 order estimated to exceed the simplified acquisi-
24 tion threshold,”.

1 (2) *CONTENT OF NOTICE.*—*Subsection (f) of such*
2 *section is amended—*

3 (A) *by striking out “and” at the end of*
4 *paragraph (4);*

5 (B) *by striking out the period at the end of*
6 *paragraph (5) and inserting in lieu thereof a*
7 *semicolon; and*

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

9 “(6) *in the case of a contract in an amount esti-*
10 *mated to exceed the \$25,000 but not to exceed the sim-*
11 *plified acquisition threshold—*

12 “(A) *a description of the procedures to be*
13 *used in awarding the contract; and*

14 “(B) *a statement specifying the periods for*
15 *prospective offerors and the contracting officer to*
16 *take the necessary preaward and award ac-*
17 *tions.”.*

18 **SEC. 4015. ELECTRONIC COMMERCE FOR FEDERAL GOV-**
19 **ERNMENT PROCUREMENTS.**

20 (a) *DEVELOPMENT AND IMPLEMENTATION OF SYS-*
21 *TEM.*—*The Administrator for Federal Procurement Policy,*
22 *in consultation with the heads of appropriate Federal Gov-*
23 *ernment agencies having applicable technical and func-*
24 *tional expertise, may take appropriate steps to develop and*
25 *implement a Federal Governmentwide architecture or de-*

1 *sign for electronic commerce that provides interoperability*
2 *among users.*

3 (b) *REQUIRED CAPABILITIES.*—*The requirements*
4 *analysis prepared to implement the architecture or design*
5 *of a system of electronic commerce referred to in subsection*
6 *(a) shall have the following capabilities:*

7 (1) *The maximum practicable capability for elec-*
8 *tronic exchange of such procurement information as*
9 *solicitations, offers, contracts, purchase orders, in-*
10 *voices, payments, and other contractual documents be-*
11 *tween the private sector and the Federal Government.*

12 (2) *Capabilities that increase the access of busi-*
13 *nesses, including small business concerns, socially and*
14 *economically disadvantaged small business concerns,*
15 *and businesses owned predominantly by women, to*
16 *Federal Government procurement opportunities.*

17 (3) *Easy access for potential Federal Govern-*
18 *ment contractors.*

19 (4) *Use of nationally and internationally recog-*
20 *nized data formats that broaden and ease electronic*
21 *interchange of data.*

22 (5) *Use of Federal Government systems and net-*
23 *works and industry systems and networks.*

24 (c) *NOTICE AND SOLICITATION REGULATIONS.*—*In*
25 *connection with implementation of the architecture or de-*

1 *sign referred to in subsection (a), the Federal Acquisition*
2 *Regulatory Council shall ensure that the Federal Acquisi-*
3 *tion Regulation contains appropriate notice and sollicita-*
4 *tion provisions applicable to acquisitions conducted through*
5 *such architecture or design. The provisions shall specify the*
6 *required form and content of notices of acquisitions and the*
7 *minimum periods for notifications and solicitations. Each*
8 *minimum period specified for a notification or solicitation*
9 *shall afford potential offerors a reasonable opportunity to*
10 *respond to the notification or solicitation, as the case may*
11 *be.*

12 (d) *LIMITATION OF PUBLICATION REQUIREMENT.—*
13 *The requirement in section 18(a) of the Office of Federal*
14 *Procurement Policy Act (41 U.S.C. 416(a)) and section 8(e)*
15 *of the Small Business Act (15 U.S.C. 637(e)) for publishing*
16 *notice of a solicitation in the Commerce Business Daily*
17 *shall not apply to acquisitions of a Federal agency or a*
18 *component of a Federal agency that are made through elec-*
19 *tronic commerce and have a value not in excess of the sim-*
20 *plified acquisition threshold if the Administrator for Fed-*
21 *eral Procurement Policy certifies that such agency or com-*
22 *ponent—*

23 (1) *has fully implemented the architecture or de-*
24 *sign referred to in subsection (a); and*

25 (2) *has procedures in place—*

1 (A) to provide notice to potential offerors in
2 accordance with the requirements of the Federal
3 Acquisition Regulation prescribed pursuant to
4 subsection (c); and

5 (B) to ensure that small business concerns
6 are afforded an opportunity to respond to a so-
7 licitation of contract offers within the period
8 specified in the solicitation.

9 (e) *DEFINITION.*—In this section, the term “simplified
10 acquisition threshold” has the meaning given that term is
11 section 4(11) of the Office of Federal Procurement Policy
12 Act (41 U.S.C. 403(11)).

13 **PART III—APPLICABILITY OF LAWS TO ACQUI-**
14 **ITIONS NOT IN EXCESS OF SIMPLIFIED AC-**
15 **QUISITION THRESHOLD**

16 **SEC. 4021. FUTURE ENACTED PROCUREMENT LAWS.**

17 The Office of Federal Procurement Policy Act (41
18 U.S.C. 401 et seq.), as amended by section 4011, is further
19 amended by adding at the end the following new section:

20 “APPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT
21 EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

22 “SEC. 30. (a) *IN GENERAL.*—The applicability of a
23 provision of law described in subsection (b) to contracts not
24 in excess of the simplified acquisition threshold may be
25 waived on a class basis in the Federal Acquisition Regula-
26 tion. Such a waiver shall not apply to a provision of law

1 *that expressly refers to this section and prohibits the waiver*
2 *of that provision of law.*

3 “(b) *REFERENCED LAW.*—A provision of law referred
4 *to in subsection (a) is any provision of law enacted after*
5 *the date of the enactment of the Federal Acquisition Stream-*
6 *lining Act of 1994 that, as determined by the Administrator*
7 *for Federal Procurement Policy, sets forth policies, proce-*
8 *dures, requirements, or restrictions for the procurement of*
9 *property or services by the Federal Government.”.*

10 **SEC. 4022. ARMED SERVICES ACQUISITIONS.**

11 (a) *REQUIREMENT FOR CONTRACT CLAUSE REGARD-*
12 *ING CONTINGENT FEES.*—Section 2306(b) of title 10,
13 *United States Code, is amended by adding at the end the*
14 *following: “This subsection does not apply to a contract that*
15 *is not in excess of the simplified acquisition threshold.”.*

16 (b) *PROHIBITION ON LIMITING SUBCONTRACTOR DI-*
17 *RECT SALES TO THE UNITED STATES.*—Section 2402 of
18 *title 10, United States Code, is amended by adding at the*
19 *end the following new subsection:*

20 “(c) *This section does not apply to a contract that is*
21 *not in excess of the simplified acquisition threshold (as de-*
22 *finied in section 4(11) of the Office of Federal Procurement*
23 *Policy Act (41 U.S.C. 403(11))).”.*

24 (c) *AUTHORITY TO EXAMINE BOOKS AND RECORDS OF*
25 *CONTRACTORS.*—Section 2313 of title 10, *United States*

1 *Code, as amended by section 2201, is further amended by*
2 *adding at the end of subsection (f) the following:*

3 “(2) *A contract that is not in excess of the sim-*
4 *plified acquisition threshold.*”.

5 (d) *REQUIREMENT TO IDENTIFY SUPPLIERS AND*
6 *SOURCES OF SUPPLIES.—Section 2384(b) of title 10,*
7 *United States Code, is amended by adding at the end the*
8 *following new paragraph:*

9 “(3) *The regulations prescribed pursuant to paragraph*
10 *(1) do not apply to a contract that does not exceed the sim-*
11 *plified acquisition threshold (as defined in section 4(11) of*
12 *the Office of Federal Procurement Policy Act (41 U.S.C.*
13 *403(11))).*”.

14 (e) *PROHIBITION AGAINST DOING BUSINESS WITH*
15 *CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d)*
16 *of title 10, United States Code, is amended in the second*
17 *sentence by striking out “above” and all that follows and*
18 *inserting in lieu thereof “in excess of the simplified acquisi-*
19 *tion threshold (as defined in section 4(11) of the Office of*
20 *Federal Procurement Policy Act (41 U.S.C. 403(11))).*”.

21 (f) *PROHIBITION ON PERSONS CONVICTED OF DE-*
22 *FENSE-CONTRACT RELATED FELONIES.—Section 2408(a)*
23 *of title 10, United States Code, is amended by adding at*
24 *the end the following new paragraph:*

1 “(4) The prohibition in paragraph (1) does not apply
2 with respect to the following:

3 “(A) A contract referred to in subparagraph (A),
4 (B), (C), or (D) of such paragraph that is not in ex-
5 cess of the simplified acquisition threshold (as defined
6 in section 4(11) of the Office of Federal Procurement
7 Policy Act (41 U.S.C. 403 (11))).

8 “(B) A subcontract referred to in such subpara-
9 graph that is under a contract described in subpara-
10 graph (A).”.

11 **SEC. 4023. CIVILIAN AGENCY ACQUISITIONS.**

12 (a) *REQUIREMENT FOR CONTRACT CLAUSE REGARD-*
13 *ING CONTINGENT FEES.*—Section 304(a) of the Federal
14 Property and Administrative Services Act of 1949 (41
15 U.S.C. 254(a)) is amended by adding at the end the follow-
16 ing: “The preceding sentence does not apply to a contract
17 that is not in excess of the simplified acquisition thresh-
18 old.”.

19 (b) *PROHIBITION ON LIMITING SUBCONTRACTOR DI-*
20 *RECT SALES TO THE UNITED STATES.*—Section 303G of
21 the Federal Property and Administrative Services Act of
22 1949 (41 U.S.C. 253g) is amended by adding at the end
23 the following new subsection:

24 “(c) This section does not apply to a contract that is
25 not in excess of the simplified acquisition threshold.”.

1 (c) *AUTHORITY TO EXAMINE BOOKS AND RECORDS OF*
2 *CONTRACTORS.*—Section 304B of the Federal Property and
3 *Administrative Services Act of 1949, as added by section*
4 *2251(a), is amended by adding at the end of subsection (f)*
5 *the following:*

6 “(2) A contract that is not in excess of the sim-
7 plified acquisition threshold.”.

8 **SEC. 4024. ACQUISITIONS GENERALLY.**

9 (a) *LIMITATION ON USE OF FUNDS TO INFLUENCE*
10 *CERTAIN FEDERAL ACTIONS.*—Section 1352(e)(2)(B) of
11 *title 31, United States Code, is amended by striking out*
12 *“\$100,000” and inserting in lieu thereof “the simplified ac-*
13 *quisition threshold (as defined in section 4(11) of the Office*
14 *of Federal Procurement Policy Act (41 U.S.C. 403(11))”.*

15 (b) *REQUIREMENT FOR CONTRACT CLAUSE RELATING*
16 *TO KICKBACKS.*—Section 7 of the Anti-Kickback Act of
17 *1986 (41 U.S.C. 57) is amended by adding at the end the*
18 *following new subsection:*

19 “(d) Subsections (a) and (b) do not apply to a prime
20 *contract that is not in excess of the simplified acquisition*
21 *threshold (as defined in section 4(11) of the Office of Federal*
22 *Procurement Policy Act (41 U.S.C. 403(11))”.*

23 (c) *MILLER ACT.*—

24 (1) *IN GENERAL.*—

1 (A) *CONTRACTS NOT EXCEEDING SIM-*
2 *PLIFIED ACQUISITION THRESHOLD.*—*The Act of*
3 *August 24, 1935 (40 U.S.C. 270a et seq.), com-*
4 *monly referred to as the “Miller Act”, is amend-*
5 *ed by adding at the end the following new sec-*
6 *tion:*

7 “*SEC. 5. This Act does not apply to a contract in an*
8 *amount that is not in excess of the simplified acquisition*
9 *threshold (as defined in section 4(11) of the Office of Federal*
10 *Procurement Policy Act (41 U.S.C. 403(11)).”.*”

11 (B) *CONFORMING AMENDMENT.*—*Subsection*
12 *(a) of the first section of such Act is amended by*
13 *striking out “, exceeding \$25,000 in amount,”.*

14 (2) *ALTERNATIVE PAYMENT PROTECTIONS.*—

15 (A) *PROTECTIONS TO BE SPECIFIED IN THE*
16 *FAR.*—*The Federal Acquisition Regulation shall*
17 *provide alternatives to payment bonds as pay-*
18 *ment protections for suppliers of labor and mate-*
19 *rials under contracts referred to in subparagraph*
20 *(C).*

21 (B) *USE OF AUTHORIZED PROTECTIONS.*—
22 *The contracting officer for a contract shall—*

23 (i) *select, from among the payment*
24 *protections provided for in the Federal Ac-*
25 *quisition Regulation pursuant to subpara-*

1 *graph (A), one or more payment protections*
2 *which the offeror awarded the contract is to*
3 *submit to the Federal Government for the*
4 *protection of suppliers of labor and mate-*
5 *rials for such contract; and*

6 *(ii) specify in the solicitation of offers*
7 *for such contract the payment protection or*
8 *protections so selected.*

9 *(C) COVERED CONTRACTS.—*

10 *(i) APPLICABILITY.—The regulations*
11 *required under subparagraph (A) and the*
12 *requirements of subparagraph (B) apply*
13 *with respect to contracts referred to in sub-*
14 *section (a) of the first section of the Miller*
15 *Act that are in excess of \$25,000 but not in*
16 *excess of the simplified acquisition threshold*
17 *(as defined in section 4(11) of the Office of*
18 *Federal Procurement Policy Act (41 U.S.C.*
19 *403(11))).*

20 *(ii) MILLER ACT REFERENCE.—The*
21 *Miller Act referred to in subparagraph (A)*
22 *is the Act of August 24, 1935 (40 U.S.C.*
23 *270a et seq.), commonly referred to as the*
24 *“Miller Act”.*

1 (d) *CONTRACT WORK HOURS AND SAFETY STANDARDS*
2 *ACT.*—

3 (1) *IN GENERAL.*—Section 103 of the Contract
4 *Work Hours and Safety Standards Act (40 U.S.C.*
5 *329) is amended by adding at the end the following*
6 *new subsection:*

7 “(c) This title does not apply to a contract in an
8 amount that is not in excess of the simplified acquisition
9 threshold (as defined in section 4(11) of the Office of Federal
10 Procurement Policy Act (41 U.S.C. 403(11))).”.

11 (2) *CONFORMING AMENDMENT.*—Section 107(a)
12 of such Act (40 U.S.C. 333(a)) is amended by insert-
13 ing after “It shall be a condition of each contract” the
14 following: “(other than a contract referred to in sec-
15 tion 103(c))”.

16 (e) *DRUG-FREE WORKPLACE ACT OF 1988.*—Section
17 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle
18 D of title V of the Anti-Drug Abuse Act of 1988; Public
19 Law 100–690; 41 U.S.C. 701(a)(1)) is amended by striking
20 out “of \$25,000 or more from any Federal agency” and in-
21 serting in lieu thereof “in excess of the simplified acquisi-
22 tion threshold (as defined in section 4(11) of such Act (41
23 U.S.C. 403(11))) by any Federal agency”.

24 (f) *CERTAIN PROCUREMENT INTEGRITY REQUIRE-*
25 *MENTS.*—

1 (1) *CERTIFICATION REQUIREMENT.*—Subsection
2 (e)(7)(A) of section 27 of the Office of Federal Pro-
3 curement Policy Act (41 U.S.C. 423) is amended by
4 striking out “\$100,000” and inserting in lieu thereof
5 “the simplified acquisition threshold”.

6 (2) *CONTRACT CLAUSE REQUIREMENT.*—Sub-
7 section (g)(1) of such section is amended by inserting
8 after “awarded by a Federal agency” the following:
9 “(other than a contract in an amount that is not in
10 excess of the simplified acquisition threshold)”.

11 (g) *SOLID WASTE DISPOSAL ACT.*—Section 6002(a) of
12 the Solid Waste Disposal Act (42 U.S.C. 6962(a)) is amend-
13 ed by striking out all that follows “with respect to any”
14 and inserting in lieu thereof “contract in excess of the sim-
15 plified acquisition threshold (as defined in section 4(11) of
16 the Office of Federal Procurement Policy Act (41 U.S.C.
17 403(11))).”.

18 **PART IV—CONFORMING AMENDMENTS**

19 **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

20 (a) *SIMPLIFIED ACQUISITION PROCEDURES.*—Section
21 2304(g) of title 10, United States Code, is amended—

22 (1) in paragraph (1), by striking out “small
23 purchases of property and services” and inserting in
24 lieu thereof “purchases of property and services not in
25 excess of the simplified acquisition threshold”;

1 (2) by striking out paragraph (2);

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

4 (4) in paragraph (2), as so redesignated—

5 (A) by striking out “small purchase thresh-
6 old” and inserting in lieu thereof “simplified ac-
7 quisition threshold”; and

8 (B) by striking out “small purchase proce-
9 dures” and inserting in lieu thereof “simplified
10 procedures”; and

11 (5) in paragraph (3), as redesignated by para-
12 graph (3), by striking out “small purchase proce-
13 dures” and inserting in lieu thereof “the simplified
14 procedures”.

15 (b) *SOLICITATION CONTENT REQUIREMENT.*—Section
16 2305(a)(2) of title 10, United States Code, is amended by
17 striking out “small purchases)” in the matter above sub-
18 paragraph (A) and inserting in lieu thereof “purchases not
19 in excess of the simplified acquisition threshold)”.

20 (c) *COST TYPE CONTRACTS.*—Section 2306(e)(2)(A) of
21 title 10, United States Code, is amended by striking out
22 “small purchase threshold” and inserting in lieu thereof
23 “simplified acquisition threshold”.

24 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

25 (a) *SIMPLIFIED ACQUISITION PROCEDURES.*—

1 (1) *PROPERTY AND SERVICES GENERALLY.*—*Sec-*
2 *tion 303(g) of the Federal Property and Administra-*
3 *tive Services Act of 1949 (41 U.S.C. 253(g)) is*
4 *amended—*

5 (A) *in paragraph (1), by striking out*
6 *“small purchases of property and services” and*
7 *inserting in lieu thereof “purchases of property*
8 *and services not in excess of the simplified acqui-*
9 *sition threshold”;*

10 (B) *by striking out paragraphs (2) and (5);*

11 (C) *by redesignating paragraphs (3) and*
12 (4) *as paragraphs (2) and (3), respectively;*

13 (D) *in paragraph (2), as so redesignated—*

14 (i) *by striking out “small purchase*
15 *threshold” and inserting in lieu thereof*
16 *“simplified acquisition threshold”; and*

17 (ii) *by striking out “small purchase*
18 *procedures” and inserting in lieu thereof*
19 *“simplified procedures”; and*

20 (E) *in paragraph (3), as redesignated by*
21 *subparagraph (C), by striking out “small pur-*
22 *chase procedures” and inserting in lieu thereof*
23 *“the simplified procedures”.*

24 (2) *LEASEHOLDS.*—*Section 210 of the Federal*
25 *Property and Administrative Services Act of 1949 (40*

1 *U.S.C. 490) is amended by adding at the end the fol-*
2 *lowing new subsection:*

3 “(k)(1) *Regulations prescribed by the Administrator*
4 *shall provide special simplified procedures for acquisitions*
5 *of leasehold interests in real property at rental rates that*
6 *do not exceed the simplified acquisition threshold.*

7 “(2) *For purposes of paragraph (1), the rental rate*
8 *or rates under a multiyear lease do not exceed the simplified*
9 *acquisition threshold if the average annual amount of the*
10 *rent payable for the period of the lease does not exceed the*
11 *simplified acquisition threshold.*

12 “(3) *In this subsection, the term ‘simplified acquisition*
13 *threshold’ has the meaning given that term in section 4(11)*
14 *of the Office of Federal Procurement Policy Act (41 U.S.C.*
15 *403(11)).’.*

16 (b) *SOLICITATION CONTENT REQUIREMENT.—Section*
17 *303A(b) of the Federal Property and Administrative Serv-*
18 *ices Act of 1949 (41 U.S.C. 253a(b)) is amended by striking*
19 *out “small purchases)” in the matter above paragraph (1)*
20 *and inserting in lieu thereof “purchases not in excess of*
21 *the simplified acquisition threshold)”.*

22 (c) *COST TYPE CONTRACTS.—Section 304(b) of the*
23 *Federal Property and Administrative Services Act of 1949*
24 *(41 U.S.C. 254(b)), as amended by section 1071, is further*
25 *amended in the second sentence by striking out “either*

1 \$25,000” and inserting in lieu thereof “either the simplified
2 acquisition threshold”.

3 **SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY**

4 **ACT.**

5 Section 19(a) of the Office of Federal Procurement Pol-
6 icy Act (41 U.S.C. 417(a)) is amended by striking out “pro-
7 curements, other than small purchases,” and inserting in
8 lieu thereof “procurements in excess of the simplified acqui-
9 sition threshold”.

10 **SEC. 4074. SMALL BUSINESS ACT.**

11 (a) *DEFINITION.*—Section 3(m) of the Small Business
12 Act (15 U.S.C. 632(m)) is amended by striking out “‘small
13 purchase threshold’” and inserting in lieu thereof “‘sim-
14 plified acquisition threshold’”.

15 (b) *USE OF SIMPLIFIED ACQUISITION THRESHOLD*
16 *TERM.*—Section 8(d)(2)(A) of the Small Business Act (15
17 U.S.C. 637(d)(2)(A)) is amended by striking out “small
18 purchase threshold” and inserting in lieu thereof “sim-
19 plified acquisition threshold”.

20 **PART V—REVISION OF REGULATIONS**

21 **SEC. 4081. REVISION REQUIRED.**

22 (a) *FEDERAL ACQUISITION REGULATION.*—The Fed-
23 eral Acquisition Regulatory Council established by section
24 25(a) of the Office of Federal Procurement Policy Act (41
25 U.S.C. 421(a)) shall review the Federal Acquisition Regula-

1 *tion to identify regulations that are applicable to acquisi-*
2 *tions in excess of a specified amount that is less than*
3 *\$100,000. The Council shall amend the regulations so iden-*
4 *tified as necessary to provide that such regulations do not*
5 *apply to acquisitions that are not in excess of the simplified*
6 *acquisition threshold. The preceding sentence does not apply*
7 *in the case of a regulation for which such an amendment*
8 *would not be in the national interest, as determined by the*
9 *Council.*

10 *(b) SUPPLEMENTAL REGULATIONS.—The head of each*
11 *Federal agency that has issued regulations, policies, or pro-*
12 *cedures referred to in section 25(c)(2) of the Office of Fed-*
13 *eral Procurement Policy Act (41 U.S.C. 421(c)(2)) shall*
14 *identify any such regulations, policies, or procedures that*
15 *are applicable to acquisitions in excess of a specified*
16 *amount that is less than \$100,000. The agency head shall*
17 *amend the regulations so identified as necessary to provide*
18 *that such regulations, policies, and procedures do not apply*
19 *to acquisitions that are not in excess of the simplified acqui-*
20 *sition threshold. The preceding sentence does not apply in*
21 *the case of a regulation, policy, or procedure for which such*
22 *an amendment would not be in the national interest, as*
23 *determined by the agency head.*

1 (c) *COMPLETION OF ACTIONS.*—All actions under this
2 section shall be completed not later than 180 days after the
3 date of the enactment of this Act.

4 (d) *DEFINITIONS.*—In this section:

5 (1) The term “simplified acquisition threshold”
6 has the meaning given such term in section 4(11) of
7 the Office of Federal Procurement Policy Act (41
8 U.S.C. 403(11)), as amended by section 4001.

9 (2) The term “Federal agency” has the meaning
10 given such term in section 3(b) of the Federal Prop-
11 erty and Administrative Services Act of 1949 (41
12 U.S.C. 472(b)).

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

15 ***SEC. 4101. ARMED SERVICES ACQUISITIONS.***

16 (a) *INAPPLICABILITY OF CERTAIN LABOR LAWS TO*
17 *CONSTRUCTION OF NAVAL VESSELS.*—Section 7299 of title
18 10, United States Code, is amended to read as follows: “No
19 contract for the construction, alteration, furnishing, or
20 equipping of a naval vessel shall be subject to the Act of
21 March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to
22 as the ‘Davis-Bacon Act’, or to the Service Contract Act
23 of 1965 (41 U.S.C. 351 et seq.), unless the President deter-
24 mines that such requirement is in the interest of national
25 defense.”

1 (b) *CLERICAL AMENDMENTS.*—

2 (1) *SECTION HEADING.*—*The heading of such sec-*
 3 *tion is amended to read as follows:*

4 **“§ 7299. *Contracts: applicability of certain labor***
 5 ***laws*”.**

6 (2) *TABLE OF SECTIONS.*—*The item relating to*
 7 *such section in the table of sections at the beginning*
 8 *of chapter 633 of title 10, United States Code, is*
 9 *amended to read as follows:*

“7299. Contracts: applicability of certain labor laws.”.

10 ***SEC. 4102. ACQUISITIONS GENERALLY.***

11 (a) *INAPPLICABILITY OF CERTAIN LABOR LAWS TO*
 12 *CONSTRUCTION OF VESSELS.*—*No contract for the construc-*
 13 *tion, alteration, furnishing, or equipping of a vessel shall*
 14 *be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)),*
 15 *commonly referred to as the ‘Davis-Bacon Act’, or to the*
 16 *Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless*
 17 *the President determines that such requirement is in the*
 18 *interest of the United States.*

19 (b) *REPEAL OF EXECUTED REPORTING REQUIRE-*
 20 *MENT.*—*Section 306 of the Trade Agreements Act of 1979*
 21 *(19 U.S.C. 2516) is repealed.*

22 (c) *WALSH-HEALEY ACT.*—

23 (1) *REPEAL OTHER THAN FOR CERTAIN DEFINI-*
 24 *TIONAL PURPOSES.*—*The Act of June 30, 1936 (41*

1 *U.S.C. 35 et seq.*), commonly referred to as the
2 “Walsh-Healey Act”, is amended to read as follows:

3 “SECTION 1. (a) The Secretary of Labor may prescribe
4 in regulations the standards for determining whether a con-
5 tractor is a manufacturer of or a regular dealer in mate-
6 rials, supplies, articles, or equipment to be manufactured
7 or used in the performance of a contract entered into by
8 any executive department, independent establishment, or
9 other agency or instrumentality of the United States, or by
10 the District of Columbia, or by any corporation all the stock
11 of which is beneficially owned by the United States, for the
12 manufacture or furnishing of materials, supplies, articles,
13 and equipment.

14 “(b) Any interested person shall have the right of judi-
15 cial review of any legal question regarding the interpreta-
16 tion of the terms ‘regular dealer’ and ‘manufacturer’, as de-
17 fined pursuant to subsection (a).”

18 (2) CONFORMING AMENDMENT.—Section 2304(h)
19 of title 10, United States Code, is amended to read as
20 follows:

21 “(h) For the purposes of the Act entitled ‘An Act relat-
22 ing to the rate of wages for laborers and mechanics em-
23 ployed on public buildings of the United States and the Dis-
24 trict of Columbia by contractors and subcontractors, and
25 for other purposes’, approved March 3, 1931 (commonly re-

1 *ferred to as the ‘Davis-Bacon Act’ (40 U.S.C. 276a et seq.),*
2 *purchases or contracts awarded after using procedures other*
3 *than sealed-bid procedures shall be treated as if they were*
4 *made with sealed-bid procedures.”.*

5 *(d) REPEAL OF REDUNDANT REQUIREMENT REGARD-*
6 *ING APPLICABILITY OF THE DAVIS-BACON ACT AND THE*
7 *WALSH-HEALEY ACT.—Section 308 of the Federal Property*
8 *and Administrative Services Act of 1949 (41 U.S.C. 258)*
9 *is repealed.*

10 **SEC. 4103. ACQUISITIONS FROM SMALL BUSINESSES.**

11 *(a) SET-ASIDE PRIORITY.—Section 15 of the Small*
12 *Business Act (15 U.S.C. 644) is amended by striking out*
13 *subsections (e) and (f).*

14 *(b) CERTIFICATE OF COMPETENCE.—Section 804 of*
15 *Public Law 103–484 (106 Stat. 2447; 10 U.S.C. 2305 note)*
16 *is repealed.*

17 **SEC. 4104. CONTRACTING PROGRAM FOR CERTAIN SMALL**
18 **BUSINESS CONCERNS.**

19 *(a) PROCUREMENT PROCEDURES AUTHORIZED.—Sec-*
20 *tion 8 of the Small Business Act (15 U.S.C. 637) is amend-*
21 *ed by inserting after subsection (b) the following new sub-*
22 *section:*

23 *“(c)(1) To facilitate the attainment of a goal for the*
24 *participation of small business concerns owned and con-*
25 *trolled by socially and economically disadvantaged individ-*

1 uals that is established for a Federal agency pursuant to
2 section 15(g)(1), the head of the agency may enter into con-
3 tracts using—

4 “(A) less than full and open competition by re-
5 stricting the competition for such awards to small
6 business concerns owned and controlled by socially
7 and economically disadvantaged individuals described
8 in subsection (d)(3)(C) of this section; and

9 “(B) a price evaluation preference not in excess
10 of 10 percent when evaluating an offer received from
11 such a small business concern as the result of an un-
12 restricted solicitation.

13 “(2) Paragraph (1) does not apply to the Department
14 of Defense.”.

15 (b) IMPLEMENTATION THROUGH THE FEDERAL AC-
16 QUISSION REGULATION.—

17 (1) IN GENERAL.—The Federal Acquisition Reg-
18 ulation shall be amended to provide for uniform im-
19 plementation of the authority provided in section 8(c)
20 of the Small Business Act, as added by subsection (a).

21 (2) MATTERS TO BE ADDRESSED.—The provi-
22 sions of the Federal Acquisition Regulation prescribed
23 pursuant to paragraph (1) shall include—

24 (A) conditions for the use of advance pay-
25 ments;

1 (B) provisions for contract payment terms
2 that provide for—

3 (i) accelerated payment for work per-
4 formed during the period for contract per-
5 formance; and

6 (ii) full payment for work performed;

7 (C) guidance on how contracting officers
8 may use, in solicitations for various classes of
9 products or services, a price evaluation pref-
10 erence pursuant to section 8(c)(1)(B) of the
11 Small Business Act, as added by subsection (a),
12 to provide a reasonable advantage to small busi-
13 ness concerns owned and controlled by socially
14 and economically disadvantaged individuals
15 without effectively eliminating any participation
16 of other small business concerns; and

17 (D)(i) procedures for a person to request the
18 head of Federal agency to determine whether the
19 use of competitions restricted to small business
20 concerns owned and controlled by socially and
21 economically disadvantaged individuals at a
22 contracting activity of such agency has caused a
23 particular industry category to bear a dispropor-
24 tionate share of the contracts awarded to attain

1 *the goal established for that contracting activity;*
2 *and*

3 (ii) *guidance for limiting the use of such re-*
4 *stricted competitions in the case of any contract-*
5 *ing activity and class of contracts determined in*
6 *accordance with such procedures to have caused*
7 *a particular industry category to bear a dis-*
8 *proportionate share of the contracts awarded to*
9 *attain the goal established for that contracting*
10 *activity.*

11 (c) *TERMINATION.*—*Section 8(c) of the Small Business*
12 *Act, as added by subsection (a), shall cease to be effective*
13 *at the end of September 30, 1999.*

14 ***Subtitle C—Miscellaneous***
15 ***Acquisition Laws***

16 ***SEC. 4151. PROHIBITION ON USE OF FUNDS FOR DOCU-***
17 ***MENTING ECONOMIC OR EMPLOYMENT IM-***
18 ***PACT OF CERTAIN ACQUISITION PROGRAMS.***

19 (a) *REVISION AND CODIFICATION.*—

20 (1) *IN GENERAL.*—*Subchapter I of chapter 134*
21 *of title 10, United States Code, is amended by adding*
22 *at the end the following new section:*

1 **“§2247. Prohibition on use of funds for documenting**
 2 **economic or employment impact of certain**
 3 **acquisition programs**

4 “No funds appropriated by the Congress may be obli-
 5 gated or expended to assist any contractor of the Depart-
 6 ment of Defense in preparing any material, report, lists,
 7 or analysis with respect to the actual or projected economic
 8 or employment impact in a particular State or congres-
 9 sional district of an acquisition program for which all re-
 10 search, development, testing, and evaluation has not been
 11 completed.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
 13 tions at the beginning of such subchapter is amended
 14 by adding at the end the following new item:

“2247. Prohibition on use of funds for documenting economic or employment im-
 pact of certain acquisition programs.”.

15 (b) REPEAL OF SUPERSEDED LAW.—Section 9048 of
 16 Public Law 102–396 (106 Stat. 1913) is repealed.

17 **SEC. 4152. RESTRICTION ON USE OF NONCOMPETITIVE**
 18 **PROCEDURES FOR PROCUREMENT FROM A**
 19 **PARTICULAR SOURCE.**

20 (a) ARMED SERVICES ACQUISITIONS.—Section 2304 of
 21 title 10, United States Code, as amended by section 1005(b),
 22 is further amended—

23 (1) in subsection (c)(5), by inserting “subject to
 24 subsection (j),” after “(5)”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(j)(1) It is the policy of Congress that no legislation
4 should be enacted that requires a procurement to be made
5 from a specified non-Federal Government source.

6 “(2) A provision of law may not be construed as re-
7 quiring a procurement to be made from a specified non-
8 Federal Government source unless that provision of law—

9 “(A) specifically refers to this subsection;

10 “(B) specifically identifies the particular non-
11 Federal Government source involved; and

12 “(C) specifically states that the procurement
13 from that source is required by such provision of law
14 in contravention of the policy set forth in paragraph
15 (1).”.

16 (b) *CIVILIAN AGENCY ACQUISITIONS*.—Section 303 of
17 the Federal Property and Administrative Services Act of
18 1949 (41 U.S.C. 253) is amended—

19 (1) in subsection (c)(5), by inserting “subject to
20 subsection (h),” after “(5)”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(h)(1) It is the policy of Congress that no legislation
24 should be enacted that requires a procurement to be made
25 from a specified non-Federal Government source.

1 “(2) A provision of law may not be construed as re-
2 quiring a procurement to be made from a specified non-
3 Federal Government source unless that provision of law—

4 “(A) specifically refers to this subsection;

5 “(B) specifically identifies the particular non-
6 Federal Government source involved; and

7 “(C) specifically states that the procurement
8 from that source is required by such provision of law
9 in contravention of the policy set forth in paragraph
10 (1).”.

11 **TITLE V—ACQUISITION**

12 **MANAGEMENT**

13 **Subtitle A—Armed Services**

14 **Acquisitions**

15 **SEC. 5001. PERFORMANCE BASED MANAGEMENT.**

16 (a) *POLICY AND GOALS FOR PERFORMANCE BASED*
17 *MANAGEMENT OF PROGRAMS.*—

18 (1) *IN GENERAL.*—Chapter 131 of title 10, Unit-
19 ed States Code, is amended by adding at the end the
20 following new section:

21 **“§2219. Performance based management: acquisition**
22 **programs**

23 “(a) *CONGRESSIONAL POLICY.*—It is the policy of Con-
24 gress that—

1 “(1) the Department of Defense should achieve,
2 on average, 90 percent of the cost and schedule goals
3 established for the research and development programs
4 and acquisition programs of the Department of De-
5 fense without reducing the performance or capabilities
6 of the items being acquired; and

7 “(2) the average period necessary for converting
8 an emerging technology into initial operational capa-
9 bility for the Department of Defense should not exceed
10 8 years.

11 “(b) *ESTABLISHMENT OF GOALS.*—(1) The Secretary
12 of Defense shall approve or define the cost, performance, and
13 schedule goals for major defense acquisition programs of the
14 Department of Defense.

15 “(2) The Comptroller of the Department of Defense
16 shall evaluate the cost goals proposed for each major defense
17 acquisition program of the Department.

18 “(c) *IDENTIFICATION OF NONCOMPLIANT PRO-*
19 *GRAMS.*—Whenever it is necessary to do so in order to im-
20 plement the policy set out in subsection (a), the Secretary
21 of Defense shall—

22 “(1) identify and consider whether there is a
23 continuing need for programs that are significantly
24 behind schedule, over budget, or not in compliance

1 with performance or capability requirements taking
2 into consideration—

3 “(A) the needs of the Department known as
4 of the time of consideration;

5 “(B) the state of the technology or tech-
6 nologies relevant to the programs and to the
7 needs of the Department;

8 “(C) the estimated costs and projected
9 schedules necessary for the completion of such
10 programs; and

11 “(D) other pertinent information; and

12 “(2) identify existing and potential research and
13 development programs and acquisition programs that
14 are suitable alternatives for programs considered pur-
15 suant to paragraph (1).

16 “(d) ANNUAL REPORTING REQUIREMENT.—The Sec-
17 retary of Defense shall include in the annual report submit-
18 ted to Congress pursuant to section 113(c) of this title an
19 assessment of the progress made in implementing the policy
20 stated in subsection (a). The Secretary shall use data from
21 existing management systems in making the assessment.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of such chapter is amended by
24 adding at the end the following new item:

“2219. Performance based management: acquisition programs.”.

1 (b) *ENHANCED SYSTEM OF PERFORMANCE INCEN-*
2 *TIVES.*—*Within one year after the date of the enactment*
3 *of this Act, the Secretary of Defense shall review the incen-*
4 *tives and personnel actions available to the Secretary for*
5 *encouraging excellence in the defense acquisition workforce*
6 *and provide an enhanced system of incentives for the en-*
7 *couragement of excellence in such workforce. The enhanced*
8 *system of incentives shall, to the maximum extent consistent*
9 *with applicable law—*

10 (1) *relate pay to performance (including the ex-*
11 *tent to which the performance of personnel in such*
12 *workforce contributes to achieving the cost goals,*
13 *schedule goals, and performance goals established for*
14 *acquisition programs of the department pursuant to*
15 *section 2219(b) of title 10, as added by subsection*
16 *(a)); and*

17 (2) *provide for consideration, in personnel eval-*
18 *uations and promotion decisions, of the extent to*
19 *which the performance of personnel in such workforce*
20 *contributes to achieving the cost goals, schedule goals,*
21 *and performance goals established for acquisition pro-*
22 *grams of the department pursuant to section 2219(b)*
23 *of title 10, United States Code, as added by subsection*
24 *(a).*

1 (c) *RECOMMENDED LEGISLATION.*—Not later than one
2 year after the date of the enactment of this Act, the Sec-
3 retary of Defense shall submit to Congress any rec-
4 ommended legislation that the Secretary considers necessary
5 to carry out section 2219 of title 10, United States Code,
6 as added by subsection (a), and otherwise to facilitate and
7 enhance management of Department of Defense acquisition
8 programs and the defense acquisition workforce on the basis
9 of performance.

10 **SEC. 5002. RESULTS ORIENTED ACQUISITION PROGRAM**
11 **CYCLE.**

12 The Secretary of Defense shall define in regulations a
13 simplified acquisition program cycle that is results-ori-
14 ented. The Secretary shall consider including in the regula-
15 tions provisions for the following:

16 (1) Program phases as follows:

17 (A) An integrated decision team meeting
18 which—

19 (i) may be requested by a potential
20 user of the system or component to be ac-
21 quired, the head of a laboratory, or a pro-
22 gram office on such bases as the emergence
23 of a new military requirement, cost savings
24 opportunity, or new technology opportunity;

1 (ii) is conducted by an acquisition pro-
2 gram executive officer; and

3 (iii) is usually completed within 1 to
4 3 months.

5 (B) A prototype development and testing
6 phase which—

7 (i) includes operational tests and con-
8 cerns relating to manufacturing operations
9 and life cycle support;

10 (ii) is usually completed within 6 to
11 36 months; and

12 (iii) produces sufficient numbers of
13 prototypes to assess operational utility.

14 (C) Product integration, development, and
15 testing which—

16 (i) includes full-scale development,
17 operational testing, and integration of com-
18 ponents; and

19 (ii) is usually completed within 1 to 5
20 years.

21 (D) Production, integration into existing
22 systems, or production and integration into ex-
23 isting systems.

1 (2) *An acquisition program approval process for*
2 *major program decisions which consists of the follow-*
3 *ing:*

4 (A) *One major decision point—*

5 (i) *which occurs for an acquisition*
6 *program before the program proceeds into*
7 *product integration and development; and*

8 (ii) *at which the Under Secretary of*
9 *Defense for Acquisition and Technology, in*
10 *consultation with the Vice Chairman of the*
11 *Joint Chiefs of Staff reviews the program,*
12 *determines whether the program should con-*
13 *tinue to be carried out beyond product inte-*
14 *gration and development, and decides*
15 *whether to commit to further development,*
16 *to require further prototyping, or to termi-*
17 *nate the program.*

18 (B) *Consideration of the potential benefits,*
19 *affordability, needs, and risks of an acquisition*
20 *program in the review of the acquisition pro-*
21 *gram.*

22 **SEC. 5003. DEFENSE ACQUISITION PILOT PROGRAM DES-**
23 **IGNATIONS.**

24 (a) *PROGRAMS AND WAIVERS.—The National Defense*
25 *Authorization Act for Fiscal Year 1994 (Public Law 103–*

1 160) is amended by inserting the following new section at
2 the end of subtitle D of title VIII:

3 **“SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DES-**
4 **IGNATIONS.**

5 “(a) *ELIGIBLE PROGRAMS.*—The Secretary of Defense
6 is authorized to designate the following defense acquisition
7 programs for participation in the defense acquisition pilot
8 program authorized by section 809 of the National Defense
9 Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430
10 note):

11 “(1) *Defense Personnel Support Center medical,*
12 *clothing and textile, and subsistence programs with*
13 *respect to the following:*

14 “(A) *All contracts for processed fruits and*
15 *vegetables and frozen seafood items for both depot*
16 *stock and direct vendor delivery.*

17 “(B) *All contracts in the subsistence prime*
18 *vendor program for grocery items.*

19 “(C) *All contracts in the Mail Order Phar-*
20 *macy Program, the prime vendor programs for*
21 *pharmaceuticals and for medical surgical items*
22 *for delivery to military hospitals.*

23 “(D) *All contracts in the medical electronic*
24 *commerce program for acquisition for depot stock*
25 *and direct vendor delivery.*

1 “(E) All contracts for the following items:
2 dress coats (small lots), dress coats, duffel bags,
3 Navy work clothing, general purpose tents, suit-
4 cases, gloves for electrical workers, boot flyers,
5 socks, drawers, undershirts, and items offered
6 under the Broad Agency Announcements for
7 Clothing and Textiles Advanced Business Prac-
8 tices Demonstration Program.

9 “(2) The Fire Support Combined Arms Tactical
10 Trainer program with respect to all contracts directly
11 related to the procurement of a training system (in-
12 cluding related hardware, software, and subsystems)
13 to perform collective training of field artillery gun-
14 nery team components with development of software
15 as required to generate the training exercises and
16 component interfaces.

17 “(3) The Joint Direct Attack Munition program
18 (JDAM I) with respect to all contracts directly relat-
19 ed to the development and procurement of a strap-on
20 guidance kit, using an inertially guided, Global Posi-
21 tioning System updated guidance kit for inventory
22 1,000 and 2,000 pound bombs.

23 “(4) The Joint Primary Aircraft Training Sys-
24 tem (JPATS) with respect to all contracts directly re-
25 lated to the acquisition of a new primary trainer air-

1 *craft to fulfill Air Force and Navy joint undergradu-*
2 *ate aviation training requirements, and an associated*
3 *ground-based training system consisting of air crew*
4 *training devices (simulators), courseware, a Training*
5 *Management System, and contractor support for the*
6 *life of the system.*

7 *“(5) The Commercial Derivatives Aircraft pro-*
8 *gram with respect to all contracts directly related to*
9 *the acquisition or upgrading of civil-derivative air-*
10 *craft for use in (A) foreign military sales of Airborne*
11 *Warning and Control Systems to foreign governments*
12 *with modifications of a type customarily provided to*
13 *commercial customers, or (B) future Air Force airlift*
14 *and tanker requirements.*

15 *“(6) The Commercial Derivative Engine pro-*
16 *gram with respect to all contracts directly related to*
17 *the acquisition of (A) commercially derived engines*
18 *(including spare engines), logistics support equip-*
19 *ment, technical orders, management data, and initial*
20 *spare parts for use in the C-17A production line, and*
21 *(B) commercially derived engines to support the pur-*
22 *chase of commercial-derivative aircraft to meet future*
23 *Air Force airlift and tanker requirements, including*
24 *engine replacement and upgrades.*

1 “(b) *WAIVER AUTHORITY.*—Subject to section 809(c)
2 of the National Defense Authorization Act for Fiscal Year
3 1991, the Secretary of Defense is authorized—

4 “(1) to apply any amendment or repeal of a pro-
5 vision of law made in the Federal Acquisition
6 Streamlining Act of 1994 to the programs described
7 in subsection (a) before the effective date of such
8 amendment or repeal; and

9 “(2) to apply to a procurement of noncommer-
10 cial items under such programs—

11 “(A) any authority provided in such Act (or
12 in an amendment made by a provision of such
13 Act) to waive a provision of law in the case of
14 commercial items, and

15 “(B) any exception applicable under such
16 Act (or an amendment made by a provision of
17 such 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 “(c) *PILOT PROGRAM IMPLEMENTATION.*—In exercis-
23 ing the authority provided in section 809 of the National
24 Defense Authorization Act for 1991, and in accordance with

1 *sections 833 through 839 of this Act, the Secretary of De-*
2 *fense, shall take the following actions:*

3 “(1) *MISSION-ORIENTED PROGRAM MANAGE-*
4 *MENT.—For one or more of the defense acquisition*
5 *programs designated for participation in the defense*
6 *acquisition pilot program, prescribe and implement*
7 *procedures which—*

8 “(A) *provide for interaction between the*
9 *program manager and the commander of the*
10 *operational command responsible for the require-*
11 *ment for the equipment acquired;*

12 “(B) *include provisions for a determination*
13 *by the commander that items proposed for pro-*
14 *curement fulfill the need defined in approved re-*
15 *quirements documents; and*

16 “(C) *may include a role for the operational*
17 *commander in decision making for program*
18 *milestone decisions and performance of accept-*
19 *ance testing of items acquired.*

20 “(2) *SAVINGS OBJECTIVES.—Not later than 45*
21 *days after the date of enactment of the Federal Acqui-*
22 *sition Streamlining Act of 1994, identify for each de-*
23 *fense acquisition program participating in the pilot*
24 *program quantitative measures and goals for reduc-*
25 *ing acquisition management costs.*

1 “(3) *PROGRAM PHASES.*—For each defense ac-
2 quisition program participating in the pilot program,
3 incorporate in an approved acquisition strategy a
4 program review process that provides senior acquisi-
5 tion officials with reports that—

6 “(A) contain essential information on pro-
7 gram results at quarterly intervals;

8 “(B) reduce data requirements from the cur-
9 rent major program review reporting require-
10 ments; and

11 “(C) include data on program costs esti-
12 mates, actual expenditures, performance esti-
13 mates, performance data from tests, and, consist-
14 ent with existing statutes, the minimum nec-
15 essary other data items required to ensure the
16 appropriate expenditure of funds appropriated
17 for that program.

18 “(4) *PROGRAM WORK FORCE POLICIES.*—With
19 regard to the review of incentives and personnel ac-
20 tions required under section 836 of this Act—

21 “(A) not later than 60 days after the date
22 of the enactment of the Federal Acquisition
23 Streamlining Act of 1994—

24 “(i) complete the review; and

1 “(ii) on the basis of the review, define
2 one or more systems that relate incentives,
3 including pay, to achievement of budgets,
4 schedules, and performance requirements;

5 “(B) not later than 120 days after the date
6 of the enactment of the Federal Acquisition
7 Streamlining Act of 1994—

8 “(i) apply such a system of incentives
9 to not less than one defense acquisition pro-
10 gram participating in the pilot program;
11 and

12 “(ii) provide for an assessment of the
13 effectiveness of that system; and

14 “(C) incorporate the results of actions taken
15 pursuant to this paragraph into the development
16 of regulations for the implementation of section
17 5001(b) of the Federal Acquisition Streamlining
18 Act of 1994.

19 “(5) *EFFICIENT CONTRACTING PROCESS.*—Take
20 any additional actions that the Secretary considers
21 necessary to waive regulations, not required by stat-
22 ute, that affect the efficiency of the contracting proc-
23 ess, including, in the Secretary’s discretion, defining
24 alternative techniques to reduce reliance on military
25 specifications and standards in contracts for the de-

1 *defense acquisition programs participating in the pilot*
2 *program.*

3 “(6) *CONTRACT ADMINISTRATION: PERFORMANCE*
4 *BASED CONTRACT MANAGEMENT.—For at least one*
5 *participating defense acquisition program for which a*
6 *determination is made to make payments for work in*
7 *progress under the authority of section 2307 of title*
8 *10, United States Code, define payment milestones on*
9 *the basis of quantitative measures of results.*

10 “(7) *CONTRACTOR PERFORMANCE ASSESS-*
11 *MENT.—Collect and evaluate performance information*
12 *on each contract entered into for a defense acquisition*
13 *program participating in the pilot program, includ-*
14 *ing information on cost, schedule, and technical per-*
15 *formance for each contractor supporting a participat-*
16 *ing program.*

17 “(d) *APPLICABILITY.—(1) Subsection (b) applies with*
18 *respect to—*

19 “(A) *a contract that is awarded or modified dur-*
20 *ing the period described in paragraph (2); and*

21 “(B) *a contract that is awarded before the begin-*
22 *ning of such period and is to be performed (or may*
23 *be performed), in whole or in part, during such pe-*
24 *riod.*

1 *ule goals established for the research and development pro-*
2 *grams and acquisition programs of the agency without re-*
3 *ducing the performance or capabilities of the items being*
4 *acquired.*

5 “(b) *ESTABLISHMENT OF GOALS.—(1) The head of*
6 *each executive agency shall approve or define the cost, per-*
7 *formance, and schedule goals for major acquisition pro-*
8 *grams of the agency.*

9 “(2) *The chief financial officer of an executive agency*
10 *shall evaluate the cost goals proposed for each major defense*
11 *acquisition program of the agency.*

12 “(c) *IDENTIFICATION OF NONCOMPLIANT PRO-*
13 *GRAMS.—Whenever it is necessary to do so in order to im-*
14 *plement the policy set out in subsection (a), the head of*
15 *an executive agency shall—*

16 “(1) *identify and consider whether there is a*
17 *continuing need for programs that are significantly*
18 *behind schedule, over budget, or not in compliance*
19 *with performance or capability requirements taking*
20 *into consideration—*

21 “(A) *the needs of the agency known as of the*
22 *time of consideration;*

23 “(B) *the state of the technology or tech-*
24 *nologies relevant to the programs and to the*
25 *needs of the agency;*

1 “(C) the estimated costs and projected
2 schedules necessary for the completion of such
3 programs; and

4 “(D) other pertinent information; and

5 “(2) identify existing and potential research and
6 development programs and acquisition programs that
7 are suitable alternatives for programs considered pur-
8 suant to paragraph (1).”.

9 (2) CLERICAL AMENDMENT.—The table of con-
10 tents in the first section of such Act, as amended by
11 sections 1552 and 1553, is further amended by insert-
12 ing after the item relating to section 310 the following
13 new item:

 “Sec. 311. Performance based management: acquisition programs.”.

14 (b) ANNUAL REPORTING REQUIREMENT.—Section 6 of
15 the Office of Federal Procurement Policy Act (41 U.S.C.
16 405), as amended by section 1091, is further amended by
17 adding at the end the following new subsection:

18 “(k) The Administrator shall submit to Congress, on
19 an annual basis, an assessment of the progress made in ex-
20 ecutive agencies in implementing the policy stated in sec-
21 tion 311(a) of the Federal Property and Administrative
22 Services Act of 1949. The Administrator shall use data from
23 existing management systems in making the assessment.”.

24 (c) ENHANCED SYSTEM OF PERFORMANCE INCEN-
25 TIVES.—Within one year after the date of the enactment

1 *of this Act, the Administrator for Federal Procurement Pol-*
2 *icy, in consultation with appropriate officials in other de-*
3 *partments and agencies of the Federal Government, shall,*
4 *to the maximum extent consistent with applicable law—*

5 (1) *establish policies and procedures for the*
6 *heads of such departments and agencies to designate*
7 *acquisition positions and manage employees (includ-*
8 *ing the accession, education, training and career de-*
9 *velopment of employees) in the designated acquisition*
10 *positions;*

11 (2) *extend to the acquisition workforce of the en-*
12 *tire executive branch the acquisition workforce poli-*
13 *cies contained in chapter 87 of title 10, United States*
14 *Code, relating to the acquisition workforce of the De-*
15 *partment of Defense; and*

16 (3) *review the incentives and personnel actions*
17 *available to the heads of department and agencies of*
18 *the Federal Government for encouraging excellence in*
19 *the acquisition workforce of the Federal Government*
20 *and provide an enhanced system of incentives for the*
21 *encouragement of excellence in such workforce*
22 *which—*

23 (A) *relates pay to performance (including*
24 *the extent to which the performance of personnel*
25 *in such workforce contributes to achieving the*

1 *cost goals, schedule goals, and performance goals*
2 *established for acquisition programs pursuant to*
3 *section 311(b) of the Federal Property and Ad-*
4 *ministrative Services Act of 1949, as added by*
5 *subsection (a)); and*

6 *(B) provides for consideration, in personnel*
7 *evaluations and promotion decisions, of the ex-*
8 *tent to which the performance of personnel in*
9 *such workforce contributes to achieving such cost*
10 *goals, schedule goals, and performance goals.*

11 *(d) RECOMMENDED LEGISLATION.—Not later than one*
12 *year after the date of the enactment of this Act, the Admin-*
13 *istrator for Federal Procurement Policy shall submit to*
14 *Congress any recommended legislation that the Secretary*
15 *considers necessary to carry out section 311 of the Federal*
16 *Property and Administrative Services Act of 1949, as added*
17 *by subsection (a), and otherwise to facilitate and enhance*
18 *management of Federal Government acquisition programs*
19 *and the acquisition workforce of the Federal Government*
20 *on the basis of performance.*

21 **SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.**

22 *(a) DEVELOPMENT OF PROCESS REQUIRED.—The Ad-*
23 *ministrator for Federal Procurement Policy, in consulta-*
24 *tion with the heads of appropriate Federal agencies, shall*
25 *develop a results-oriented acquisition process for implemen-*

1 *tation by agencies in acquisitions of property and services*
2 *by the Federal agencies. The process shall include the identi-*
3 *fication of quantitative measures and standards for deter-*
4 *mining the extent to which an acquisition of noncommercial*
5 *items by a Federal agency satisfies the needs for which the*
6 *items are being acquired.*

7 (b) *INAPPLICABILITY OF PROCESS TO DEPARTMENT OF*
8 *DEFENSE.—The process developed pursuant to subsection*
9 *(a) may not be applied to the Department of Defense.*

10 ***Subtitle C—Miscellaneous***

11 ***SEC. 5091. CONTRACTOR EXCEPTIONAL PERFORMANCE*** 12 ***AWARDS.***

13 *The Office of Federal Procurement Policy Act, as*
14 *amended by section 4021, is further amended by adding at*
15 *the end the following:*

16 “*CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS*

17 “*SEC. 31. (a) ESTABLISHMENT.—There is hereby es-*
18 *tablished an executive branch program to recognize and*
19 *promote exceptional contract performance by Federal Gov-*
20 *ernment contractors.*

21 “*(b) SELECTION.—(1) The Administrator shall ensure*
22 *the establishment of criteria for selection of contractors to*
23 *receive exceptional performance awards under the program.*

24 “*(2) The head of an executive agency may select one*
25 *or more agency contractors to receive an exceptional per-*
26 *formance award under the program.*

1 “(c) *AWARD CEREMONY.*—The Vice President, or the
 2 head of the executive agency selecting a contractor for an
 3 exceptional performance award, shall present the award to
 4 the contractor with such ceremony as the Vice President or
 5 head of the agency, as the case may be, considers appro-
 6 priate.”.

7 **SEC. 5092. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**
 8 **TELLECTUAL PROPERTY RIGHTS.**

9 Section 2386 of title 10, United States Code, is amend-
 10 ed by striking out paragraphs (3) and (4) and inserting
 11 in lieu thereof the following:

12 “(3) Technical data and computer software.

13 “(4) Releases for past infringement of patents or
 14 copyrights or for unauthorized use of technical data
 15 or computer software.”.

16 **TITLE VI—STANDARDS OF**
 17 **CONDUCT**

18 **Subtitle A—Ethics Provisions**

19 **SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PRO-**
 20 **CUREMENT POLICY ACT.**

21 (a) *RECUSAL.*—Subsection (c) of section 27 of the Of-
 22 fice of Federal Procurement Policy Act (41 U.S.C. 423) is
 23 amended—

24 (1) in paragraph (1)—

1 (A) in the matter above subparagraph (A),
2 by inserting “only” after “subsection (b)(1)”;
3 and

4 (B) in subparagraph (A), by inserting “(in-
5 cluding the modification or extension of a con-
6 tract)” after “any procurement”;

7 (2) by striking out paragraphs (2) and (3) and
8 inserting in lieu thereof:

9 “(2) Whenever the head of a procuring activity ap-
10 proves a recusal under paragraph (1), a copy of the recusal
11 request and the approval of the request shall be retained
12 by such official for a period (not less than five years) speci-
13 fied in regulations prescribed in accordance with subsection
14 (o).

15 “(3)(A) Except as provided in subparagraph (B), all
16 recusal requests and approvals of recusal requests pursuant
17 to this subsection shall be made available to the public on
18 request.

19 “(B) Any part of a recusal request or an approval of
20 a recusal request that is exempt from the disclosure require-
21 ments of section 552 of title 5, United States Code, under
22 subsection (b)(1) of such section may be withheld from dis-
23 closure to the public otherwise required under subparagraph
24 (A).”; and

1 (3) in paragraph (4), by striking out “competing
2 contractor” and inserting in lieu thereof “person”.

3 (b) *APPLICABILITY OF CERTIFICATION REQUIRE-*
4 *MENT.*—Subsection (e)(7)(A) of such section is amended by
5 adding at the end the following: “However, paragraph
6 (1)(B) does not apply with respect to a contract for less
7 than \$500,000.”.

8 (c) *RESTRICTIONS RESULTING FROM PROCUREMENT*
9 *ACTIVITIES OF PROCUREMENT OFFICIALS.*—Subsection (f)
10 of such section is amended—

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

13 (2) by striking out paragraphs (1) and (2) and
14 inserting in lieu thereof the following:

15 “(1) No individual who, in the year prior to separa-
16 tion from service as an officer or employee of the Govern-
17 ment or an officer of the uniformed services in a covered
18 position, participated personally and substantially in ac-
19 quisition functions related to a contract, subcontract, or
20 claim of \$500,000 or more and—

21 “(A) engaged in repeated direct contact with the
22 contractor or subcontractor on matters relating to
23 such contract, subcontract, or claim; or

24 “(B) exercised significant ongoing decisionmak-
25 ing responsibility with respect to the contractor or

1 *subcontractor on matters relating to such contract,*
2 *subcontract, or claim,*
3 *shall knowingly accept or continue employment with such*
4 *contractor or subcontractor for a period of 1 year following*
5 *the individual's separation from service, except that such*
6 *individual may accept or continue employment with any*
7 *division or affiliate of such contractor or subcontractor that*
8 *does not produce the same or similar products as the entity*
9 *involved in the negotiation or performance of the contract*
10 *or subcontract or the adjustment of the claim.*

11 “(2) *No contractor or subcontractor, or any officer, em-*
12 *ployee, agent, or consultant of such contractor or sub-*
13 *contractor shall knowingly offer, provide, or continue any*
14 *employment for another person, if such contractor, sub-*
15 *contractor, officer, employee, agent, or consultant knows or*
16 *should know that the acceptance of such employment is or*
17 *would be in violation of paragraph (1).*

18 “(3) *The head of each Federal agency shall designate*
19 *in writing as a ‘covered position’ under this section each*
20 *of the following positions in that agency:*

21 “(A) *The position of source selection authority,*
22 *member of a source selection evaluation board, or*
23 *chief of a financial or technical evaluation team, or*
24 *any other position, if the officer or employee in that*
25 *position is likely personally to exercise substantial re-*

1 *sponsibility for ongoing discretionary functions in the*
2 *evaluation of proposals or the selection of a source for*
3 *a contract in excess of \$500,000.*

4 “(B) *The position of procuring contracting offi-*
5 *cer, or any other position, if the officer or employee*
6 *in that position is likely personally to exercise sub-*
7 *stantial responsibility for ongoing discretionary func-*
8 *tions in the negotiation of a contract in excess of*
9 *\$500,000 or the negotiation or settlement of a claim*
10 *in excess of \$500,000.*

11 “(C) *The position of program executive officer,*
12 *program manager, or deputy program manager, or*
13 *any other position, if the officer or employee in that*
14 *position is likely personally to exercise similar sub-*
15 *stantial responsibility for ongoing discretionary func-*
16 *tions in the management or administration of a con-*
17 *tract in excess of \$500,000.*

18 “(D) *The position of administrative contracting*
19 *officer, the position of an officer or employee assigned*
20 *on a permanent basis to a Government Plant Rep-*
21 *resentative’s Office, the position of auditor, a quality*
22 *assurance position, or any other position, if the offi-*
23 *cer or employee in that position is likely personally*
24 *to exercise substantial responsibility for ongoing dis-*
25 *cretionary functions in the on-site oversight of a con-*

1 tractor's operations with respect to a contract in ex-
2 cess of \$500,000.

3 “(E) A position in which the incumbent is likely
4 personally to exercise substantial responsibility for
5 ongoing discretionary functions in operational or de-
6 velopmental testing activities involving repeated di-
7 rect contact with a contractor regarding a contract in
8 excess of \$500,000.”.

9 (d) DISCLOSURE OF PROPRIETARY OR SOURCE SELEC-
10 TION INFORMATION TO UNAUTHORIZED PERSONS.—Sub-
11 section (l) of such section is amended—

12 (1) by inserting “who are likely to be involved
13 in contracts, modifications, or extensions in excess of
14 \$25,000” in the first sentence after “its procurement
15 officials”; and

16 (2) by striking out “(e)” each place it appears
17 and inserting in each such place “(f)”.

18 (e) RULES OF CONSTRUCTION.—Subsection (n) of such
19 section is amended to read as follows:

20 “(n) RULES OF CONSTRUCTION.—Nothing in this sec-
21 tion shall be construed to—

22 “(1) authorize the withholding of any informa-
23 tion from the Congress, any committee or subcommit-
24 tee thereof, a Federal agency, any board of contract

1 *appeals of a Federal agency, the Comptroller General,*
2 *or an inspector general of a Federal agency;*

3 *“(2) restrict the disclosure of information to, or*
4 *receipt of information by, any person or class of per-*
5 *sons authorized, in accordance with applicable agency*
6 *regulations or procedures, to receive that information;*

7 *“(3) restrict a contractor from disclosing its own*
8 *proprietary information or the recipient of informa-*
9 *tion so disclosed by a contractor from receiving such*
10 *information; or*

11 *“(4) restrict the disclosure or receipt of informa-*
12 *tion relating to a Federal agency procurement that*
13 *has been canceled by the agency and that the con-*
14 *tracting officer concerned determines in writing is not*
15 *likely to be resumed.”.*

16 *(f) TERM TO BE DEFINED IN REGULATIONS.—Sub-*
17 *section (o)(2)(A) of such section is amended—*

18 *(1) by inserting “money, gratuity, or other” be-*
19 *fore “thing of value”;* and

20 *(2) by inserting before the semicolon “and such*
21 *other exceptions as may be adopted on a Government-*
22 *wide basis under section 7353 of title 5, United States*
23 *Code”.*

24 *(g) TERMS DEFINED IN LAW.—Subsection (p) of such*
25 *section is amended—*

1 (1) in paragraph (1) by striking out “clauses
2 (i)–(viii)” and inserting in lieu thereof “clauses (i)
3 through (vii)”;

4 (2) in paragraph (3)—

5 (A) in subparagraph (A)—

6 (i) by striking out clause (i);

7 (ii) by redesignating clauses (ii), (iii),
8 (iv), (v), (vi), (vii), and (viii) as clauses (i),
9 (ii), (iii), (iv), (v), (vi), and (vii), respec-
10 tively; and

11 (iii) in clause (i) (as redesignated by
12 subclause (II) of this clause), by striking out
13 “review and approval of a specification”
14 and inserting in lieu thereof “approval or
15 issuance of a specification, acquisition plan,
16 procurement request, or requisition”; and

17 (B) in subparagraph (B), by striking out
18 all after “includes” and inserting in lieu thereof
19 the following: “any individual acting on behalf
20 of, or providing advice to, the agency with re-
21 spect to any phase of the agency procurement
22 concerned, regardless of whether such individual
23 is a consultant, expert, or adviser, or an officer
24 or employee of a contractor or subcontractor
25 (other than a competing contractor).”; and

1 (3) in paragraph (6)(A), by inserting
2 “nonpublic” before “information”.

3 **SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES**
4 **CODE.**

5 Section 208(a) of title 18, United States Code, is
6 amended—

7 (1) by inserting “(1)” before “Except as per-
8 mitted”; and

9 (2) by adding at the end the following new para-
10 graph:

11 “(2) Whoever knowingly aids, abets, counsels, com-
12 mands, induces, or procures conduct prohibited by this sec-
13 tion shall be subject to the penalties set forth in section 216
14 of this title.”.

15 **SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

16 (a) *REPEAL.*—The following provisions of law are re-
17 pealed:

18 (1) Sections 2207, 2397, 2397a, 2397b, and
19 2397c of title 10, United States Code.

20 (2) Section 281 of title 18, United States Code.

21 (3) Section 801 of title 37, United States Code.

22 (4) Part A of title VI of the Department of En-
23 ergy Organization Act (42 U.S.C. 7211 through
24 7218).

25 (b) *CLERICAL AMENDMENTS.*—

1 (1) *TITLE 10.*—Part IV of subtitle A of title 10,
2 *United States Code, is amended—*

3 (A) *in the table of sections at the beginning*
4 *of chapter 131, by striking out the item relating*
5 *to section 2207; and*

6 (B) *in the table of sections for chapter 141,*
7 *by striking out the items relating to sections*
8 *2397, 2397a, 2397b, and 2397c.*

9 (2) *TITLE 18.*—The table of sections for chapter
10 *15 of title 18, United States Code, is amended by*
11 *striking out the item relating to section 281.*

12 (3) *TITLE 37.*—The table of sections for chapter
13 *15 of title 37, United States Code, is amended by*
14 *striking out the item relating to section 801.*

15 (4) *DEPARTMENT OF ENERGY ORGANIZATION*
16 *ACT.*—The table of contents for the Department of En-
17 *ergy Organization Act is amended by striking out the*
18 *matter relating to part A of title VI.*

19 **SEC. 6004. IMPLEMENTATION.**

20 (a) *REGULATIONS.*—Not later than 180 days after the
21 *date of the enactment of this Act, regulations implementing*
22 *the amendments made by section 6001 to section 27 of the*
23 *Office of Federal Procurement Policy Act (41 U.S.C. 423),*
24 *including definitions of the terms used in subsection (f) of*
25 *such section, shall be issued in accordance with sections 6*

1 *and 25 of such Act (41 U.S.C. 405 and 521) after coordina-*
2 *tion with the Director of the Office of Government Ethics.*

3 *(b) SAVINGS PROVISIONS.—*

4 *(1) CONTRACTOR CERTIFICATIONS.—No officer,*
5 *employee, agent, representative, or consultant of a*
6 *contractor who has signed a certification under sec-*
7 *tion 27(e)(1)(B) of the Office of Federal Procurement*
8 *Policy Act (41 U.S.C. 423(e)(1)(B)) before the effec-*
9 *tive date of this Act shall be required to sign a new*
10 *certification as a result of the enactment of this Act.*

11 *(2) FEDERAL PROCUREMENT OFFICIAL CERTIFI-*
12 *CATIONS.—No procurement official of a Federal agen-*
13 *cy who has signed a certification under section 27(l)*
14 *of the Office of Federal Procurement Policy Act (41*
15 *U.S.C. 423(l)) before the date of enactment of this Act*
16 *shall be required to sign a new certification as a re-*
17 *sult of the enactment of this Act.*

18 *(c) INSPECTOR GENERAL REPORTS.—Not later than*
19 *May 31 of each of the years 1995 through 1998, the Inspec-*
20 *tor General of each Federal agency (or, in the case of a*
21 *Federal agency that does not have an Inspector General,*
22 *the head of such agency) shall submit to Congress a report*
23 *on the compliance by the agency during the preceding year*
24 *with the requirement for the head of the agency to designate*
25 *covered procurement positions under section 27(f)(3) of the*

1 *Office of Federal Procurement Policy Act (as added by sec-*
2 *tion 6001(c)).*

3 ***Subtitle B—Additional***
4 ***Amendments***

5 ***SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FED-***
6 ***ERAL PERSONNEL.***

7 *(a) AMENDMENT OF OFPP ACT.—The Office of Fed-*
8 *eral Procurement Policy Act, as amended by section 1092,*
9 *is further amended by inserting after section 22 the follow-*
10 *ing new section 23:*

11 *“CONTRACTING FUNCTIONS PERFORMED BY FEDERAL*
12 *PERSONNEL*

13 *“SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVISORY*
14 *AND ASSISTANCE SERVICES.—(1) No person who is not a*
15 *person described in subsection (b) may be paid by an agen-*
16 *cy for services to conduct evaluations or analyses of any*
17 *aspect of a proposal submitted for an acquisition unless per-*
18 *sonnel described in subsection (b) with adequate training*
19 *and capabilities to perform such evaluations and analyses*
20 *are not readily available within the agency or another Fed-*
21 *eral agency, as determined in accordance with standards*
22 *and procedures prescribed in the Federal Acquisition Regu-*
23 *lation.*

24 *“(2) In the administration of this subsection, the head*
25 *of each agency shall determine in accordance with the*

1 *standards and procedures set forth in the Federal Acquisi-*
2 *tion Regulation whether—*

3 “(A) *a sufficient number of personnel described*
4 *in subsection (b) within the agency or another Fed-*
5 *eral agency are readily available to perform a par-*
6 *ticular evaluation or analysis for the agency head*
7 *making the determination; and*

8 “(B) *the readily available personnel have the*
9 *training and capabilities necessary to perform the*
10 *evaluation or analysis.*

11 “(b) *COVERED PERSONNEL.—For purposes of sub-*
12 *section (a), the personnel described in this subsection are*
13 *as follows:*

14 “(1) *An employee, as defined in section 2105 of*
15 *title 5, United States Code.*

16 “(2) *A member of the Armed Forces of the Unit-*
17 *ed States.*

18 “(3) *A person assigned to a Federal agency pur-*
19 *suant to subchapter VI of chapter 33 of title 5, United*
20 *States Code.*

21 “(c) *RULE OF CONSTRUCTION.—Nothing in this sec-*
22 *tion is intended to affect the relationship between the Fed-*
23 *eral Government and a federally funded research and devel-*
24 *opment center.”.*

1 (b) *REQUIREMENT FOR GUIDANCE AND REGULA-*
2 *TIONS.*—*Not later than 90 days after the date of the enact-*
3 *ment of this Act, the Federal Acquisition Regulatory Coun-*
4 *cil established by section 25(a) of the Office of Federal Pro-*
5 *curement Policy Act (41 U.S.C. 421(a)) shall—*

6 (1) *review part 37 of title 48 of the Code of Fed-*
7 *eral Regulations as it relates to the use of advisory*
8 *and assistance services; and*

9 (2) *provide guidance and promulgate regulations*
10 *regarding—*

11 (A) *what actions Federal agencies are re-*
12 *quired to take to determine whether expertise is*
13 *readily available within the Federal Government*
14 *before contracting for advisory and technical*
15 *services to conduct acquisitions; and*

16 (B) *the manner in which personnel with ex-*
17 *pertise may be shared with agencies needing ex-*
18 *pertise for such acquisitions.*

19 ***SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR***
20 ***STUDY AND REPORT.***

21 *Section 17 of the Office of Federal Procurement Policy*
22 *Act (41 U.S.C. 415) is repealed.*

23 ***SEC. 6053. INTERESTS OF MEMBERS OF CONGRESS.***

24 *Section 3741 of the Revised Statutes (41 U.S.C. 22)*
25 *is amended to read as follows:*

1 *“No member of Congress shall be admitted to any share*
2 *or part of any contract or agreement made, entered into,*
3 *or accepted by or on behalf of the United States, or to any*
4 *benefit to arise thereupon.”*

5 **SEC. 6054. WAITING PERIOD FOR SIGNIFICANT CHANGES**
6 **PROPOSED FOR ACQUISITION REGULATIONS.**

7 *Section 22(a) of the Office of Federal Procurement Pol-*
8 *icy Act (41 U.S.C. 418b) is amended—*

9 (1) *by striking out “30 days” and inserting in*
10 *lieu thereof “60 days”; and*

11 (2) *by adding at the end the following: “Notwith-*
12 *standing the preceding sentence, such a policy, regula-*
13 *tion, procedure, or form may take effect earlier than*
14 *60 days after the publication date when there are*
15 *compelling circumstances for the earlier effective date,*
16 *but in no event may that effective date be less than*
17 *30 days after the publication date.”*

18 **Subtitle C—Whistleblower**
19 **Protection**

20 **SEC. 6101. ARMED SERVICES PROCUREMENTS.**

21 (a) *WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR*
22 *EMPLOYEES.—Section 2409 of title 10, United States Code,*
23 *is amended—*

24 (1) *by striking out subsection (d);*

1 (2) by redesignating subsection (c) as subsection
2 (d); and

3 (3) by inserting after subsection (b) the following
4 new subsection (c):

5 “(c) *REMEDY AND ENFORCEMENT AUTHORITY.*—(1) If
6 the Secretary of Defense determines that a defense contrac-
7 tor has subjected a person to a reprisal prohibited by sub-
8 section (a), the Secretary may take one or more of the fol-
9 lowing actions:

10 “(A) Order the defense contractor to take affirm-
11 ative action to abate the reprisal.

12 “(B) Order the defense contractor to reinstate the
13 person to the position that the person held before the
14 reprisal, together with the compensation (including
15 back pay), employment benefits, and other terms and
16 conditions of employment that would apply to the
17 person in that position if the reprisal had not been
18 taken.

19 “(C) Order the defense contractor to pay the
20 complainant an amount equal to the aggregate
21 amount of all costs and expenses (including attorney’s
22 fees and expert witnesses’ fees) that were reasonably
23 incurred by the complainant for, or in connection
24 with, bringing the complaint regarding the reprisal,
25 as determined by the Secretary.

1 “(2) Whenever a person fails to comply with an order
2 issued under paragraph (1), the Secretary shall file an ac-
3 tion for enforcement of such order in the United States dis-
4 trict court for a district in which the reprisal was found
5 to have occurred. In any action brought under this para-
6 graph, the court may grant appropriate relief, including
7 injunctive relief and compensatory and exemplary dam-
8 ages.

9 “(3) Any person adversely affected or aggrieved by an
10 order issued under paragraph (1) may obtain review of the
11 order’s conformance with this subsection, and any regula-
12 tions issued to carry out this section, in the United States
13 court of appeals for a circuit in which the reprisal is alleged
14 in the order to have occurred. No petition seeking such re-
15 view may be filed more than 60 days after issuance of the
16 Secretary’s order. Review shall conform to chapter 7 of title
17 5.”.

18 (b) RELATED LAW.—

19 (1) REPEAL.—Section 2409a of title 10, United
20 States Code, is repealed.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 141 of such title is
23 amended by striking out the item relating to section
24 2409a.

1 **SEC. 6102. GOVERNMENTWIDE WHISTLEBLOWER PROTEC-**
2 **TIONS FOR CONTRACTOR EMPLOYEES.**

3 *The Office of Federal Procurement Policy Act (41*
4 *U.S.C. 401 et seq.), as amended by section 5091, is further*
5 *amended by adding at the end the following new section:*

6 *“CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL*
7 *FOR DISCLOSURE OF CERTAIN INFORMATION*

8 *“SEC. 32. (a) PROHIBITION OF REPRISALS.—An em-*
9 *ployee of an executive agency contractor may not be dis-*
10 *charged, demoted, or otherwise discriminated against as a*
11 *reprisal for disclosing to a Member of Congress or an au-*
12 *thorized official of the agency or the Department of Justice*
13 *information relating to a substantial violation of law relat-*
14 *ed to an agency contract (including the competition for or*
15 *negotiation of an agency contract).*

16 *“(b) INVESTIGATION OF COMPLAINTS.—A person who*
17 *believes that the person has been subjected to a reprisal pro-*
18 *hibited by subsection (a) may submit a complaint to the*
19 *Inspector General of the executive agency. Unless the In-*
20 *spector General determines that the complaint is frivolous,*
21 *the Inspector General shall investigate the complaint and,*
22 *upon completion of such investigation, submit a report of*
23 *the findings of the investigation to the person, the contractor*
24 *concerned, and the head of the agency. In the case of an*
25 *executive agency that does not have an inspector general,*

1 *the duties of the inspector general under this section shall*
2 *be performed by an official designated by the agency head.*

3 “(c) *REMEDY AND ENFORCEMENT AUTHORITY.*—(1) *If*
4 *the head of an executive agency determines that an agency*
5 *contractor has subjected a person to a reprisal prohibited*
6 *by subsection (a), the agency head may take one or more*
7 *of the following actions:*

8 “(A) *Order the contractor to take affirmative ac-*
9 *tion to abate the reprisal.*

10 “(B) *Order the contractor to reinstate the person*
11 *to the position that the person held before the reprisal,*
12 *together with the compensation (including back pay),*
13 *employment benefits, and other terms and conditions*
14 *of employment that would apply to the person in that*
15 *position if the reprisal had not been taken.*

16 “(C) *Order the contractor to pay the complain-*
17 *ant an amount equal to the aggregate amount of all*
18 *costs and expenses (including attorney’s fees and ex-*
19 *pert witnesses’ fees) that were reasonably incurred by*
20 *the complainant for, or in connection with, bringing*
21 *the complaint regarding the reprisal, as determined*
22 *by the Secretary.*

23 “(2) *Whenever a person fails to comply with an order*
24 *issued under paragraph (1), the agency head shall file an*
25 *action for enforcement of such order in the United States*

1 *district court for a district in which the reprisal was found*
2 *to have occurred. In any action brought under this para-*
3 *graph, the court may grant appropriate relief, including*
4 *injunctive relief and compensatory and exemplary dam-*
5 *ages.*

6 “(3) *Any person adversely affected or aggrieved by an*
7 *order issued under paragraph (1) may obtain review of the*
8 *order’s conformance with this subsection, and any regula-*
9 *tions issued to carry out this section, in the United States*
10 *court of appeals for a circuit in which the reprisal is alleged*
11 *in the order to have occurred. No petition seeking such re-*
12 *view may be filed more than 60 days after issuance of the*
13 *agency head’s order. Review shall conform to chapter 7 of*
14 *title 5, United States Code.*

15 “(d) *CONSTRUCTION.*—*Nothing in this section may be*
16 *construed to authorize the discharge of, demotion of, or dis-*
17 *crimination against an employee for a disclosure other than*
18 *a disclosure protected by subsection (a) or to modify or der-*
19 *ogate from a right or remedy otherwise available to the em-*
20 *ployee.*

21 “(e) *COORDINATION WITH OTHER LAW.*—*This section*
22 *does not apply with respect to the Department of Defense.*
23 *For the corresponding provision of law applicable to the*
24 *Department of Defense, see section 2409 of title 10, United*
25 *States Code.*

1 “(f) *DEFINITION.*—*In this section, the term ‘Inspector*
2 *General’ means an Inspector General appointed under the*
3 *Inspector General Act of 1978.’*”.

4 ***TITLE VII—DEFENSE TRADE AND***
5 ***COOPERATION***

6 ***SEC. 7001. PURCHASES OF FOREIGN GOODS.***

7 (a) *REPEAL OF EXECUTED REQUIREMENTS.*—

8 (1) *REQUIREMENT FOR POLICY GUIDANCE.*—
9 *Title III of the Act of March 3, 1933 (41 U.S.C. 10a*
10 *et seq.), commonly referred to as the “Buy American*
11 *Act”, is amended in section 4(g) (41 U.S.C. 10b–1(g))*
12 *by striking out paragraphs (2)(C) and (3).*

13 (2) *REPORTING REQUIREMENT.*—*Section 9096(b)*
14 *of Public Law 102–396 (106 Stat. 1924; 41 U.S.C.*
15 *10b–2(b)) is repealed.*

16 (b) *REPEAL OF REDUNDANT PROVISION.*—

17 (1) *CONSIDERATION OF NATIONAL SECURITY OB-*
18 *JECTIVES.*—*Section 2327 of title 10, United States*
19 *Code, is repealed.*

20 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
21 *tions at the beginning of chapter 137 of such title is*
22 *amended by striking out the item relating to section*
23 *2327.*

1 **SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.**

2 (a) *TERMINOLOGY REVISIONS.*—Section 2531 of title
3 10, United States Code, is amended—

4 (1) in the subsection captions for subsections (a)
5 and (c), by striking out “MOUS AND RELATED” and
6 inserting in lieu thereof “INTERNATIONAL”;

7 (2) in subsection (a), by striking out “proposed
8 memorandum of understanding, or any existing or
9 proposed agreement related to a memorandum of un-
10 derstanding,” in the matter above paragraph (1) and
11 inserting in lieu thereof “proposed international
12 agreement, including a memorandum of understand-
13 ing.”;

14 (3) by striking out “memorandum of under-
15 standing or related agreement” each place it appears
16 and inserting in lieu thereof “international agree-
17 ment”;

18 (4) in subsection (b), by striking out “memoran-
19 dum or related agreement” each place it appears in
20 the second sentence and inserting in lieu thereof
21 “international agreement”; and

22 (5) in subsection (c)—

23 (A) by striking out “A” after “AGREE-
24 MENTS.—” and inserting in lieu thereof “An”;
25 and

1 “(c) *The Secretary of Defense may waive the restric-*
2 *tions in subsections (a) and (b) for a period not to exceed*
3 *180 days upon a written determination that the armed*
4 *forces are involved in a contingency operation or that in-*
5 *volvement of the armed forces in a contingency operation*
6 *is imminent. Upon making such a determination, the Sec-*
7 *retary shall transmit a copy of the determination to the*
8 *Committees on Armed Services of the Senate and House of*
9 *Representatives.”.*

10 (b) *COMMUNICATIONS SUPPORT.—Section 2350f of*
11 *title 10, United States Code, is amended—*

12 (1) *by redesignating subsection (d) as subsection*
13 *(e); and*

14 (2) *by inserting after subsection (c) the following*
15 *new subsection:*

16 “(d)(1) *Nothing in this section shall be construed to*
17 *limit the authority of the Secretary of Defense, without a*
18 *formal bilateral agreement or multilateral arrangement, to*
19 *furnish communications support and related supplies to, or*
20 *receive communications support and related supplies from,*
21 *an allied country in accordance with this subsection.*

22 “(2) *The Secretary of Defense may furnish or receive*
23 *such support and supplies on a reciprocal basis for a period*
24 *not to exceed 90 days—*

1 “(A) in order to meet emerging operational re-
2 quirements of the United States and the allied coun-
3 try; or

4 “(B) incident to a joint military exercise with
5 the allied country.

6 “(3) If interconnection of communication circuits is
7 maintained for joint or multilateral defense purposes under
8 the authority of this subsection, the costs of maintaining
9 such circuits may be allocated among the various users.”.

10 **TITLE VIII—COMMERCIAL ITEMS**

11 **SEC. 8001. DEFINITIONS.**

12 Section 4 of the Office of Federal Procurement Policy
13 Act (41 U.S.C. 403), as amended by section 4001(a), is fur-
14 ther amended—

15 (1) by striking out “Act—” and inserting in lieu
16 thereof “Act:”;

17 (2) by capitalizing the initial letter in the first
18 word of each paragraph;

19 (3) by striking out the semicolon at the end of
20 each of paragraphs (1), (2), (3), (5), (6), (7), (8), and
21 (9) and inserting in lieu thereof a period;

22 (4) in paragraphs (4) and (10), by striking out
23 “; and” at the end and inserting in lieu thereof a pe-
24 riod; and

1 (5) by adding at the end the following new para-
2 graphs:

3 “(12) The term ‘commercial item’ means—

4 “(A) property, other than real property,
5 that is of a type customarily used by the general
6 public or by nongovernmental entities in the
7 course of normal business operations for purposes
8 other than governmental purposes and—

9 “(i) has been sold, leased, or licensed to
10 the general public;

11 “(ii) has not been sold, leased, or li-
12 censed to the general public but has been of-
13 fered for sale, lease, or license to the general
14 public; or

15 “(iii) is not yet available in the com-
16 mercial marketplace but will be made avail-
17 able for commercial delivery within a rea-
18 sonable period;

19 “(B) any item that, but for—

20 “(i) modifications of a type customar-
21 ily available in the commercial market-
22 place, or

23 “(ii) minor modifications made to
24 meet Federal Government requirements,

25 would satisfy the criteria in subparagraph (A);

1 “(C) any combination of items meeting the
2 requirements of subparagraph (A), (B), or (D)
3 that are of a type customarily combined and sold
4 in combination to the general public;

5 “(D) installation services, maintenance
6 services, repair services, training services, and
7 other services if such services are procured for
8 support of an item referred to in subparagraph
9 (A), (B), or (C) and if the source of such serv-
10 ices—

11 “(i) offers such services to the general
12 public and the Federal Government contem-
13 poraneously and under similar terms and
14 conditions; and

15 “(ii) offers to use the same work force
16 for providing the Federal Government with
17 such services as the source uses for provid-
18 ing such services to the general public; and

19 “(E) any item, combination of items, or
20 service referred to in subparagraph (A), (B), (C),
21 or (D), regardless of whether the item, combina-
22 tion of items, or service is transferred between or
23 among separate divisions, subsidiaries, or affili-
24 ates of a contractor.

1 “(13) The term ‘nondevelopmental item’
2 means—

3 “(A) any commercial item;

4 “(B) any previously developed item of sup-
5 ply that is in use by a department or agency of
6 the United States, a State or local government,
7 or a foreign government with which the United
8 States has a mutual defense cooperation agree-
9 ment;

10 “(C) any item of supply described in sub-
11 paragraph (A) or (B) that requires only minor
12 modification of the type normally available in
13 the commercial marketplace in order to meet the
14 requirements of the procuring department or
15 agency; or

16 “(D) any item of supply currently being
17 produced that does not meet the requirements of
18 subparagraph (A), (B), or (C) solely because the
19 item—

20 “(i) is not yet in use; or

21 “(ii) is not yet available in the com-
22 mercial marketplace.

23 “(14) The term ‘component’ means any item
24 supplied to the Federal Government as part of an end
25 item or of another component.

1 “(15) The term ‘commercial component’ means
2 any component that is a commercial item.”.

3 **SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMER-**
4 **CIAL ITEMS AND NONDEVELOPMENTAL**
5 **ITEMS.**

6 (a) *PREFERENCE REQUIRED.*—The Office of Federal
7 Procurement Policy Act (41 U.S.C. 401 et seq.), as amended
8 by section 6102, is further amended by adding at the end
9 the following new section:

10 “*PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS*
11 *AND NONDEVELOPMENTAL ITEMS*

12 “*SEC. 33. (a) PREFERENCE.*—The head of each execu-
13 tive agency shall ensure that, to the maximum extent prac-
14 ticable—

15 “(1) requirements of the executive agency with
16 respect to a procurement of supplies are stated in
17 terms of—

18 “(A) functions to be performed;

19 “(B) performance required; or

20 “(C) essential physical characteristics;

21 “(2) such requirements are defined so that com-
22 mercial items or, to the extent that commercial items
23 suitable to meet the agency’s needs are not available,
24 other nondevelopmental items may be procured to ful-
25 fill such requirements; and

1 “(3) offerors of commercial items and other
2 nondevelopmental items are provided an opportunity
3 to compete in any procurement to fill such require-
4 ments.

5 “(b) IMPLEMENTATION.—The head of each executive
6 agency shall ensure that procurement officials in that execu-
7 tive agency, to the maximum extent practicable—

8 “(1) acquire commercial items or other
9 nondevelopmental items to meet the needs of the execu-
10 tive agency;

11 “(2) require prime contractors and subcontractors at all levels under the executive agency contracts
12 to incorporate commercial items or other
13 nondevelopmental items as components of items supplied to the executive agency;
14 to incorporate commercial items or other
15 nondevelopmental items as components of items supplied to the executive agency;

16 “(3) modify requirements in appropriate cases to
17 ensure that the requirements can be met by commercial items or, to the extent that commercial items
18 suitable to meet the agency’s needs are not available,
19 other nondevelopmental items;
20 other nondevelopmental items;

21 “(4) state specifications in terms that enable and
22 encourage bidders and offerors to supply commercial
23 items or, to the extent that commercial items suitable
24 to meet the agency’s needs are not available, other

1 *nondevelopmental items in response to the executive*
2 *agency solicitations;*

3 *“(5) revise the executive agency’s procurement*
4 *policies, practices, and procedures not required by*
5 *law to reduce any impediments in those policies,*
6 *practices, and procedures to the acquisition of com-*
7 *mmercial items; and*

8 *“(6) require training of appropriate personnel in*
9 *the acquisition of commercial items.*

10 *“(c) PRELIMINARY MARKET RESEARCH.—(1) The*
11 *head of an executive agency shall conduct market research*
12 *appropriate to the circumstances—*

13 *“(A) before developing new specifications for a*
14 *procurement by that executive agency; and*

15 *“(B) before soliciting bids or proposals for a con-*
16 *tract in excess of the simplified acquisition threshold.*

17 *“(2) The head of an executive agency shall use the re-*
18 *sults of market research to determine whether there are com-*
19 *mmercial items or, to the extent that commercial items suit-*
20 *able to meet the agency’s needs are not available, other*
21 *nondevelopmental items available that—*

22 *“(A) meet the executive agency’s requirements;*

23 *“(B) could be modified to meet the executive*
24 *agency’s requirements; or*

1 “(C) could meet the executive agency’s require-
2 ments if those requirements were modified to a rea-
3 sonable extent.”.

4 (b) *REPEAL OF SUPERSEDED PROVISION.*—

5 (1) *SEPARATE STATEMENT OF PREFERENCE FOR*
6 *DEPARTMENT OF DEFENSE.*—Section 2325 of title 10,
7 *United States Code, is repealed.*

8 (2) *CLERICAL AMENDMENT.*—The table of sec-
9 tions at the beginning of chapter 137 of such title is
10 amended by striking out the item relating to section
11 2325.

12 **SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.**

13 (a) *REQUIRED FAR PROVISIONS.*—The Office of Fed-
14 eral Procurement Policy Act (41 U.S.C. 401 et seq.), as
15 amended by section 8002, is further amended by adding at
16 the end the following:

17 “*FEDERAL ACQUISITION REGULATION PROVISIONS REGARD-*
18 *ING ACQUISITIONS OF COMMERCIAL ITEMS AND COM-*
19 *PONENTS*

20 “*SEC. 34. (a) CONTRACT CLAUSES AND OTHER*
21 *CLAUSES.*—(1)(A) *The Federal Acquisition Regulation*
22 *shall include one or more sets of contract clauses containing*
23 *the required terms and conditions for the acquisition of*
24 *commercial items and commercial components by executive*
25 *agencies and by contractors in the performance of contracts*
26 *of executive agencies.*

1 “(B) The contract clauses referred to in subparagraph
2 (A) shall include only—

3 “(i) those clauses that are required to implement
4 provisions of law applicable to acquisitions of com-
5 mercial items or commercial components, as the case
6 may be;

7 “(ii) those contract clauses that are essential for
8 the protection of the Federal Government’s interest in
9 an acquisition of commercial items or commercial
10 components, as the case may be; and

11 “(iii) those contract clauses that are determined
12 to be consistent with standard commercial practice.

13 “(2) Subject to paragraph (3), the Federal Acquisition
14 Regulation shall require that, to the maximum extent prac-
15 ticable, only the contract clauses referred to in paragraph
16 (1) be used in a contract, or be required to be used in a
17 subcontract, for the acquisition of commercial items or com-
18 mercial components by or for an executive agency.

19 “(3) The Federal Acquisition Regulation shall provide
20 that a contract or subcontract referred to in paragraph (2)
21 may contain contract clauses other than the contract clauses
22 referred to in that paragraph only if the other clauses are
23 essential for the protection of the Federal Government’s in-
24 terest in—

1 “(A) that contract or subcontract, as determined
2 in writing by the contracting officer for such contract;
3 or

4 “(B) a class of contracts or subcontracts, as de-
5 termined by the head of an agency concerned, unless
6 the determination of that head of an agency is dis-
7 approved by the Administrator.

8 “(4) The Federal Acquisition Regulation shall provide
9 standards and procedures for waiving the use of contract
10 clauses required pursuant to paragraph (1), other than
11 those required by law, including standards for determining
12 the cases in which a waiver is appropriate.

13 “(b) MARKET ACCEPTANCE.—The Federal Acquisition
14 Regulation shall provide that under appropriate conditions
15 the head of an executive agency may require offerors to dem-
16 onstrate that the items offered—

17 “(1) have either—

18 “(A) achieved commercial market accept-
19 ance; or

20 “(B) been satisfactorily supplied to an exec-
21 utive agency under current or recent contracts
22 for the same or similar requirements; and

23 “(2) otherwise meet the item description, speci-
24 fications, or other criteria prescribed in the public no-
25 tice and solicitation relating to the contract.

1 “(c) *USE OF FIRM, FIXED PRICE CONTRACTS.*—The
2 *Federal Acquisition Regulation shall include a requirement*
3 *that firm, fixed price contracts or fixed price with economic*
4 *price adjustment contracts, be used, to the maximum extent*
5 *practicable, for the acquisition of commercial items.*

6 “(d) *CONTRACT QUALITY REQUIREMENTS.*—The Fed-
7 *eral Acquisition Regulation shall include provisions that—*

8 “(1) *permit, to the maximum extent practicable,*
9 *a contractor under a commercial items acquisition to*
10 *use the contractor’s existing quality assurance system*
11 *as a substitute for compliance with a requirement for*
12 *the Federal Government to inspect or test the commer-*
13 *cial items before the contractor’s tender of those items*
14 *for acceptance by the Federal Government;*

15 “(2) *require that, to the maximum extent prac-*
16 *ticable, an executive agency accept commercial war-*
17 *ranties (including extended warranties) offered by*
18 *offerors of commercial items to commercial customers*
19 *and use such warranties for the repair and replace-*
20 *ment of commercial items; and*

21 “(3) *set forth guidance to executive agencies re-*
22 *garding the use of past performance of items and*
23 *sources as a factor in contract award decisions.”.*

24 “(e) *TREATMENT OF TRANSFERS BETWEEN AFFILI-*
25 *ATES.*—The *Federal Acquisition Regulation shall provide*

1 *for a transfer of commercial items from one division, sub-*
2 *sidary, or affiliate of a contractor to another division, sub-*
3 *sidary, or affiliate of the contractor to be treated as a sub-*
4 *contract for purposes of section 35 of the Office of Federal*
5 *Procurement Policy Act and the provisions of law amended*
6 *by section 8005 of the Federal Acquisition Streamlining Act*
7 *of 1994.”.*

8 *(b) DEFENSE CONTRACT CLAUSES.—*

9 *(1) TERMINATION OF DOD AUTHORITY.—Section*
10 *824(b) of the National Defense Authorization Act for*
11 *Fiscal Years 1990 and 1991 (Public Law 101–189; 10*
12 *U.S.C. 2325 note) shall cease to be effective on the*
13 *date on which the regulations implementing section*
14 *34 of the Office of Federal Procurement Policy Act, as*
15 *added by subsection (a), become effective.*

16 *(2) SAVINGS PROVISION.—Notwithstanding sec-*
17 *tion 34(a) of the Office of Federal Procurement Policy*
18 *Act (as added by subsection (a)), contracts of the De-*
19 *partment of Defense entered into before the date on*
20 *which section 824(b) ceases to be effective under para-*
21 *graph (1), and subcontracts entered into before such*
22 *date under such contracts, may include clauses devel-*
23 *oped pursuant to paragraphs (2) and (3) of section*
24 *824(b) of the National Defense Authorization Act for*

1 *Fiscal Years 1990 and 1991 (Public Law 101–189; 10*
2 *U.S.C. 2325 note).*

3 **SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN**
4 **LAWS.**

5 *The Office of Federal Procurement Policy Act (41*
6 *U.S.C. 401 et seq.), as amended by section 8003, is further*
7 *amended by adding at the end the following:*

8 “CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO
9 ACQUISITIONS OF COMMERCIAL ITEMS

10 “SEC. 35. (a) *IN GENERAL.*—*The applicability of a*
11 *provision of law described in subsection (c) that is enacted*
12 *after the date of the enactment of the Federal Acquisition*
13 *Streamlining Act of 1994 to contracts for the acquisition*
14 *of commercial items may be waived on a class basis in the*
15 *Federal Acquisition Regulation. Such a waiver shall not*
16 *apply to a provision of law that expressly refers to this sec-*
17 *tion and prohibits the waiver of that provision of law.*

18 “(b) *WAIVER OF APPLICABILITY TO SUBCONTRACTS.*—
19 (1) *The applicability of a provision of law described in sub-*
20 *section (c) to subcontracts under a contract for the acquisi-*
21 *tion of commercial items or a subcontract for the acquisi-*
22 *tion of commercial components may be waived on a class*
23 *basis in the Federal Acquisition Regulation. Such a waiver*
24 *shall not apply to a provision of law that expressly refers*
25 *to this section and prohibits the waiver of that provision*
26 *of law.*

1 “(2) Nothing in this subsection shall be construed to
2 authorize the waiver of the applicability of any provision
3 of law with respect to—

4 “(A) any contract with a prime contractor; or

5 “(B) any subcontract under a contract with a
6 prime contractor who does not substantially trans-
7 form the commercial items supplied under the con-
8 tract.

9 “(c) COVERED LAW.—A provision of law referred to
10 in subsections (a) and (b) is any provision of law that, as
11 determined by the Federal Acquisition Regulatory Council,
12 sets forth policies, procedures, requirements, or restrictions
13 for the procurement of property or services by the Federal
14 Government.”.

15 **SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF**

16 **LAW.**

17 (a) ARMED SERVICES ACQUISITIONS.—

18 (1) PROHIBITION ON CONTINGENT FEES.—Sec-
19 tion 2306(b) of title 10, United States Code, as
20 amended by section 4022(a), is further amended by
21 inserting before the period at the end of the sentence
22 added by section 4022(a) the following: “or to a con-
23 tract for the acquisition of commercial items”.

24 (2) REQUIREMENT TO IDENTIFY SUPPLIERS AND
25 SOURCES OF SUPPLIES.—Paragraph (2) of section

1 2384(b) of title 10, United States Code, is amended
2 to read as follows:

3 “(2) The regulations prescribed pursuant to paragraph
4 (1) do not apply to a contract that requires the delivery
5 of supplies that are commercial items, as defined in section
6 2302 of this title.”.

7 (3) PROHIBITION AGAINST DOING BUSINESS
8 WITH CERTAIN OFFERORS OR CONTRACTORS.—Section
9 2393(d) of title 10, United States Code, as amended
10 by section 4022(e), is further amended by adding at
11 the end the following: “The requirement shall not
12 apply in the case of a subcontract for the acquisition
13 of commercial items (as defined in section 4(12) of the
14 Office of Federal Procurement Policy Act (41 U.S.C.
15 403(12))).”.

16 (4) PROHIBITION ON LIMITATION OF SUB-
17 CONTRACTOR DIRECT SALES.—Section 2402 of title
18 10, United States Code, as amended by section
19 4022(b), is further amended by adding at the end the
20 following new subsection:

21 “(d)(1) An agreement between the contractor in a con-
22 tract for the acquisition of commercial items and a sub-
23 contractor under such contract that restricts sales by such
24 subcontractor directly to persons other than the contractor
25 may not be considered to unreasonably restrict sales by that

1 *subcontractor to the United States in violation of the provi-*
2 *sion included in such contract pursuant to subsection (a)*
3 *if the agreement does not result in the Federal Government*
4 *being treated differently with regard to the restriction than*
5 *any other prospective purchaser of such commercial items*
6 *from that subcontractor.*

7 “(2) In paragraph (1), the term ‘commercial item’ has
8 the meaning given such term in section 4(12) of the Office
9 of Federal Procurement Policy Act (41 U.S.C. 403(12)).”.

10 (5) *CONTRACTOR INVENTORY ACCOUNTING SYS-*
11 *TEMS: STANDARDS.—Section 2410b of title 10, United*
12 *States Code, is amended—*

13 (A) by inserting “(a) *REGULATIONS RE-*
14 *QUIRED.—*” before “The Secretary of Defense”;
15 and

16 (B) by adding at the end the following new
17 subsection:

18 “(b) *INAPPLICABILITY TO ACQUISITIONS OF COMMER-*
19 *CIAL ITEMS.—The regulations prescribed pursuant to sub-*
20 *section (a) need not apply to a contract for the acquisition*
21 *of commercial items (as defined in section 4(12) of the Of-*
22 *fice of Federal Procurement Policy Act (41 U.S.C.*
23 *403(12))).”.*

24 (6) *PROHIBITION ON PERSONS CONVICTED OF*
25 *DEFENSE-CONTRACT RELATED FELONIES.—Paragraph*

1 (4) of section 2408(a) of title 10, United States Code,
2 as added by section 4022(f), is amended—

3 (A) by inserting after subparagraph (A) the
4 following:

5 “(B) A contract referred to in such subpara-
6 graph that is for the acquisition of commercial items
7 (as defined in section 4(12) of the Office of Federal
8 Procurement Policy Act (41 U.S.C. 403(12))).”;

9 (B) by inserting “or (B)” before the period
10 at the end of subparagraph (C).

11 (b) CIVILIAN AGENCY ACQUISITIONS.—

12 (1) RESTRICTIONS ON SUBCONTRACTOR SALES
13 TO THE UNITED STATES.—Section 303G of the Fed-
14 eral Property and Administrative Services Act of
15 1949 (41 U.S.C. 253g), as amended by section
16 4023(b), is further amended by adding at the end the
17 following new subsection:

18 “(d) An agreement between the contractor in a con-
19 tract for the acquisition of commercial items and a sub-
20 contractor under such contract that restricts sales by such
21 subcontractor directly to persons other than the contractor
22 may not be considered to unreasonably restrict sales by that
23 subcontractor to the United States in violation of the provi-
24 sion included in such contract pursuant to subsection (a)
25 if the agreement does not result in the Federal Government

1 *being treated differently with regard to the restriction than*
2 *any other prospective purchaser of such commercial items*
3 *from that subcontractor.”.*

4 (2) *PROHIBITION ON CONTINGENT FEES.—Section*
5 *304(a) of the Federal Property and Administra-*
6 *tive Services Act of 1949 (41 U.S.C. 254(a)), as*
7 *amended by section 4023(a) is further amended by in-*
8 *serting before the period at the end of the sentence*
9 *added by section 4041 the following: “or to a contract*
10 *for the acquisition of commercial items”.*

11 (c) *ACQUISITIONS GENERALLY.—*

12 (1) *FEDERAL WATER POLLUTION CONTROL*
13 *ACT.—Section 508 of the Federal Water Pollution*
14 *Control Act (33 U.S.C. 1368) is amended by adding*
15 *at the end the following new subsection:*

16 “(f)(1) *No certification by a contractor, and no con-*
17 *tract clause, may be required in the case of a contract for*
18 *the acquisition of commercial items in order to implement*
19 *a prohibition or requirement of this section or a prohibition*
20 *or requirement issued in the implementation of this section.*

21 “(2) *In paragraph (1), the term ‘commercial item’ has*
22 *the meaning given such term in section 4(12) of the Office*
23 *of Federal Procurement Policy Act (41 U.S.C. 403(12)).”.*

24 (2) *CONTRACT WORK HOURS AND SAFETY STAND-*
25 *ARDS ACT.—The Contract Work Hours and Safety*

1 *Standards Act (title I of the Work Hours and Safety*
2 *Act of 1962 (40 U.S.C. 327 et seq.)) is amended by*
3 *adding at the end the following new section:*

4 “*SEC. 108. (a) No certification by a contractor, and*
5 *no contract clause, may be required in the case of a contract*
6 *for the acquisition of commercial items in order to imple-*
7 *ment a prohibition or requirement in this title.*”

8 “*(b) In subsection (a), the term ‘commercial item’ has*
9 *the meaning given such term in section 4(12) of the Office*
10 *of Federal Procurement Policy Act (41 U.S.C. 403(12)).’.*”

11 (3) *OFFICE OF FEDERAL PROCUREMENT POLICY*
12 *ACT REQUIREMENT RELATING TO PROCUREMENT IN-*
13 *TEGRITY CERTIFICATIONS.—Section 27(e)(7) of the*
14 *Office of Federal Procurement Policy Act (41 U.S.C.*
15 *423) is amended by adding at the end the following*
16 *new subparagraph:*

17 “*(C) This subsection does not apply to a contract for*
18 *the acquisition of commercial items.’.*”

19 (4) *CERTAIN PROVISIONS OF THE ANTI-KICKBACK*
20 *ACT OF 1986.—*

21 (A) *REQUIREMENT FOR CONTRACT*
22 *CLAUSE.—Section 7 of the Anti-Kickback Act of*
23 *1986 (41 U.S.C. 57), as amended by section*
24 *4024(b), is further amended by inserting before*
25 *the period at the end of subsection (d) the follow-*

1 ing: “or to a prime contract for the acquisition
2 of commercial items (as defined in section 4(12)
3 of such Act (41 U.S.C. 403(12))).”.

4 (B) *INSPECTION AUTHORITY*.—Section 8 of
5 such Act (41 U.S.C. 58) is amended by adding
6 at the end the following: “This section does not
7 apply with respect to a prime contract for the
8 acquisition of commercial items (as defined in
9 section 4(12) of the Office of Federal Procure-
10 ment Policy Act (41 U.S.C. 403(12))).”.

11 (5) *DRUG-FREE WORKPLACE ACT OF 1988*.—Sec-
12 tion 5152(a)(1) of the Drug-Free Workplace Act of
13 1988 (subtitle D of title V of Public Law 100–690; 41
14 U.S.C. 701(a)(1)), as amended by section 4024(e), is
15 further amended by inserting after the matter inserted
16 by such section 4024(e) the following: “, other than a
17 contract for the procurement of commercial items (as
18 defined in section 4(12) of such Act (41 U.S.C.
19 403(12))),”.

20 (6) *CLEAN AIR ACT*.—Section 306 of the Clean
21 Air Act (42 U.S.C. 7606) is amended by adding at
22 the end the following new subsection:

23 “(f)(1) No certification by a contractor, and no con-
24 tract clause, may be required in the case of a contract for
25 the acquisition of commercial items in order to implement

1 *a prohibition or requirement of this section or a prohibition*
2 *or requirement issued in the implementation of this section.*

3 “(2) *In paragraph (1), the term ‘commercial item’ has*
4 *the meaning given such term in section 4(12) of the Office*
5 *of Federal Procurement Policy Act (41 U.S.C. 403(12)).”.*

6 (7) *FLY AMERICAN REQUIREMENTS.—Section*
7 *1117 of the Federal Aviation Act of 1958 (49 U.S.C.*
8 *App. 1517) is amended by adding at the end the fol-*
9 *lowing new subsection:*

10 “(e)(1) *No certification by a contractor, and no con-*
11 *tract clause, may be required in the case of a contract for*
12 *the transportation of commercial items in order to imple-*
13 *ment a requirement in this section.*

14 “(2) *In paragraph (1), the term ‘commercial item’ has*
15 *the meaning given such term in section 4(12) of the Office*
16 *of Federal Procurement Policy Act (41 U.S.C. 403(12)).”.*

17 **SEC. 8006. 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 requirements of paragraph (3)(B) do not*
23 *apply to contracts for the purchase of commercial items.*
24 *The Administrator shall prescribe for such contracts appro-*
25 *priate limits on the applicability of a deadline for submis-*

1 *sion of bids or proposals that is required by subsection*
2 *(a)(1). Such limits shall be incorporated in the Federal Ac-*
3 *quisition Regulation.”.*

4 **SEC. 8007. ADVOCATES FOR ACQUISITION OF COMMERCIAL**
5 **AND NONDEVELOPMENTAL ITEMS.**

6 (a) *RESPONSIBILITIES OF THE ADVOCATE FOR COM-*
7 *PETITION.—Section 20(c) of the Office of Federal Procure-*
8 *ment Policy Act (41 U.S.C. 418(c)) is amended to read as*
9 *follows:*

10 “(c) *The advocate for competition for each procuring*
11 *activity shall be responsible for promoting full and open*
12 *competition, promoting the acquisition of commercial items*
13 *and other nondevelopmental items, and challenging barriers*
14 *to such acquisition, including such barriers as unneces-*
15 *sarily restrictive statements of need, unnecessarily detailed*
16 *specifications, and unnecessarily burdensome contract*
17 *clauses.”.*

18 (b) *REPEAL OF SUPERSEDED PROVISION.—Section 28*
19 *of such Act (41 U.S.C. 424) is repealed.*

20 **SEC. 8008. PROVISIONS NOT AFFECTED.**

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

24 (1) *section 111 of the Federal Property and Ad-*
25 *ministrative Services Act of 1949 (40 U.S.C. 759),*

1 *popularly referred to as the “Brooks Automatic Data*
2 *Processing Act”;*

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

7 *(3) section 8(a) of the Small Business Act (15*
8 *U.S.C. 637(a)) or any other provision of that Act; or*

9 *(4) the Act of June 25, 1938 (41 U.S.C. 46–48c),*
10 *that was revised and reenacted in the Act of June 23,*
11 *1971 (85 Stat. 77), popularly referred to as the “Jav-*
12 *its-Wagner-O’Day Act”.*

13 **SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL**
14 **GOVERNMENT USE OF MARKET RESEARCH.**

15 *(a) REPORT REQUIRED.—Not later than 2 years after*
16 *the date of the enactment of this Act, the Comptroller Gen-*
17 *eral of the United States shall submit to the Congress a*
18 *report on the use of market research by the Federal Govern-*
19 *ment in support of the procurement of commercial items*
20 *and nondevelopmental items.*

21 *(b) CONTENT OF REPORT.—The report shall include*
22 *the following:*

23 *(1) A review of existing Federal Government*
24 *market research efforts to gather data concerning*
25 *commercial and other nondevelopmental items.*

1 (2) *A review of the feasibility of creating a Gov-*
2 *ernment-wide data base for storing, retrieving, and*
3 *analyzing market data, including use of existing Fed-*
4 *eral Government resources.*

5 (3) *Any recommendations for changes in law or*
6 *regulations that the Comptroller General considers*
7 *appropriate.*

8 ***TITLE IX—EFFECTIVE DATES***
9 ***AND IMPLEMENTATION***

10 ***SEC. 9001. EFFECTIVE DATES.***

11 (a) *EFFECTIVE DATE OF ACT.*—*Except as otherwise*
12 *provided in this Act, this Act shall take effect on the date*
13 *of the enactment of this Act.*

14 (b) *EFFECTIVE DATE OF AMENDMENTS.*—*Except as*
15 *otherwise provided in this Act, the amendments made by*
16 *this Act shall take effect on the date on which final imple-*
17 *menting regulations are prescribed in accordance with sec-*
18 *tion 9002.*

19 ***SEC. 9002. IMPLEMENTING REGULATIONS.***

20 (a) *PROPOSED CHANGES.*—*Proposed changes to the*
21 *Federal Acquisition Regulation and such other proposed*
22 *regulations (or changes to existing regulations) as may be*
23 *necessary to implement this Act shall be published in the*
24 *Federal Register not later than 210 days after the date of*
25 *the enactment of this Act.*

1 (b) *PUBLIC COMMENT.*—*The proposed regulations de-*
2 *scribed in subsection (a) shall be made available for public*
3 *comment for a period of not less than 60 days.*

4 (c) *FINAL REGULATIONS.*—*Final regulations shall be*
5 *published in the Federal Register not later than 330 days*
6 *after the date of enactment of this Act.*

7 (d) *APPLICABILITY.*—(1) *The amendments made by*
8 *this Act shall apply, in the manner prescribed in such final*
9 *regulations, to any solicitation that is issued or any unso-*
10 *licited proposal that is received on or after the date de-*
11 *scribed in paragraph (3).*

12 (2) *The amendments made by this Act shall apply, to*
13 *the extent and in the manner prescribed in such final regu-*
14 *lations, to any matter related to—*

15 (A) *a contract that is in effect on the date de-*
16 *scribed in paragraph (3);*

17 (B) *an offer under consideration on the date de-*
18 *scribed in paragraph (3); or*

19 (C) *any other proceeding or action that is ongo-*
20 *ing on the date described in paragraph (3).*

21 (3) *The date referred to in paragraphs (1) and (2) is*
22 *the date specified in such regulations, which—*

23 (A) *shall not be earlier than the end of the 30-*
24 *day period that begins on the date the regulations re-*
25 *quired by subsection (c) are published; and*

1 (B) shall not be later than October 1, 1995.

2 (e) SAVINGS PROVISION.—Nothing in this Act shall be
3 construed to affect the validity of any action taken or any
4 contract entered into prior to the date specified in the regu-
5 lations pursuant to subsection (d)(3) except to the extent
6 and in the manner prescribed in such regulations.

7 **SEC. 9003. EVALUATION BY THE COMPTROLLER GENERAL.**

8 (a) EVALUATION RELATING TO ISSUANCE OF REGULA-
9 TIONS.—Not later than December 1, 1995, the Comptroller
10 General shall submit to the committees referred to in sub-
11 section (c) a report evaluating compliance with the require-
12 ments in section 9002, relating to the issuance of imple-
13 menting regulations.

14 (b) EVALUATION OF IMPLEMENTATION OF REGULA-
15 TIONS.—Not later than December 1, 1996, the Comptroller
16 General shall submit to the committees referred to in sub-
17 section (c) a report evaluating the effectiveness of the regula-
18 tions implementing this Act in streamlining the acquisition
19 system and fulfilling the other purposes of this Act.

20 (c) COMMITTEES DESIGNATED TO RECEIVE THE RE-
21 PORTS.—The Comptroller General shall submit the reports
22 required by this section to the Committees on Armed Serv-
23 ices and on Governmental Affairs of the Senate and the
24 Committees on Small Business on Government Operations
25 of the House of Representatives.

1 **SEC. 9004. DATA COLLECTION THROUGH THE FEDERAL**
 2 **PROCUREMENT DATA SYSTEM.**

3 (a) *DATA COLLECTION REQUIRED.*—The Federal Pro-
 4 curement Data System described in section 6(d)(4)(A) of
 5 the Office of Federal Procurement Policy Act (41 U.S.C.
 6 405(d)(4)(A)) shall be modified to collect from contracts in
 7 excess of the simplified acquisition threshold data pertain-
 8 ing to the following matters:

9 (1) *Contract awards made pursuant to competi-*
 10 *tions conducted pursuant to section 2323 of title 10,*
 11 *United States Code, or section 8(c) of the Small Busi-*
 12 *ness Act (15 U.S.C. 637(c)).*

13 (2) *Awards to business concerns owned and con-*
 14 *trolled by women.*

15 (3) *Number of offers received in response to a so-*
 16 *licitation.*

17 (4) *Task order contracts.*

18 (5) *Contracts for the acquisition of commercial*
 19 *items.*

20 (b) *DEFINITION.*—In this section, the term “simplified
 21 acquisition threshold” has the meaning given such term in
 22 section 4 of the Office of Federal Procurement Policy Act
 23 (41 U.S.C. 403).

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