[COMMITTEE PRINT]

THE "FEDERAL ACQUISITION REFORM ACT OF 1996" AND THE "INFORMATION TECHNOLOGY MANAGEMENT REFORM ACT OF 1996"—Divisions D and E of the "National Defense Authorization Act for Fiscal Year 1996" (P.L. 104–106)

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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PUBLIC LAW 104–106
February 10, 1996

To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to reform acquisition laws and information technology management of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1996".

* * * * *

DIVISION D—FEDERAL ACQUISITION REFORM

SEC. 4001. SHORT TITLE.

This division may be cited as the "Federal Acquisition Reform Act of 1996".

TITLE XLI—COMPETITION

SEC. 4101. EFFICIENT COMPETITION.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304 of title 10, United States Code, is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection (j):

"(j) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection (h):

"(h) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.".

(c) REVISIONS TO NOTICE THRESHOLDS.—Section 18(a)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(1)(B)) is amended—

(A) by striking out "subsection (f)—" and all that follows through the end of the subparagraph and inserting in lieu thereof "subsection (b); and"; and

(B) by inserting after "property or services" the following: "for a price expected to exceed $10,000, but not to exceed $25,000,".

SEC. 4102. EFFICIENT APPROVAL PROCEDURES.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304(f)(1)(B) of title 10, United States Code, is amended—

(1) in clause (i)—

(A) by striking out "$100,000 (but equal to or less than $1,000,000)" and inserting in lieu thereof "$500,000 (but equal to or less than $10,000,000)"; and

(B) by striking out "(ii), (iii), or (iv)" and inserting in lieu thereof "(ii) or (iii)";

(2) in clause (ii)—

(A) by striking out "$1,000,000 (but equal to or less than $10,000,000)" and inserting in lieu thereof "$10,000,000 (but equal to or less than $50,000,000)"; and

(B) by adding "or" at the end;

(3) by striking out clause (iii); and

(4) by redesignating clause (iv) as clause (iii).

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)) is amended—

(1) in clause (i)—

(A) by striking out "$100,000 (but equal to or less than $1,000,000)" and inserting in lieu thereof "$500,000 (but equal to or less than $10,000,000)"; and

(B) by striking out "(ii), (iii), or (iv);" and inserting in lieu thereof "(ii) or (iii); and";

(2) in clause (ii)—

(A) by striking out "$1,000,000 (but equal to or less than $10,000,000)" and inserting in lieu thereof "$10,000,000 (but equal to or less than $50,000,000)"; and

(B) by striking out the semicolon after "civilian" and inserting in lieu thereof a comma; and

(3) in clause (iii), by striking out "$10,000,000" and inserting in lieu thereof "$50,000,000".

SEC. 4103. EFFICIENT COMPETITIVE RANGE DETERMINATIONS.

(a) ARMED SERVICES ACQUISITIONS.—Paragraph (4) of 2305(b) of title 10, United States Code, is amended—

(1) in subparagraph (C), by striking out "(C)", by transferring the text to the end of subparagraph (B), and in that text by striking out "Subparagraph (B)" and inserting in lieu thereof "This subparagraph";

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting before subparagraph (C) (as so redesignated) the following new subparagraph (B):

"(B) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subparagraph (A)(i) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(d)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting before paragraph (3) (as so redesignated) the following new paragraph (2):

"(2) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under paragraph (1)(A) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.".

SEC. 4104. PREAWARD DEBRIEFINGS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305(b) of title 10, United States Code, is amended—

(1) by striking out subparagraph (F) of paragraph (5);

(2) by redesignating paragraph (6) as paragraph (9); and

(3) by inserting after paragraph (5) the following new paragraphs:

"(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

"(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) of this section only if that offeror requested and was refused a preaward debriefing under subparagraph (A) of this paragraph.

"(C) The debriefing conducted under this subsection shall include—

"(i) the executive agency's evaluation of the significant elements in the offeror's offer;

"(ii) a summary of the rationale for the offeror's exclusion; and

"(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(D) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

"(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.

"(8) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) by striking out paragraph (6) of subsection (e);

(2) by redesignating subsections (f), (g), (h), and (i) as subsections (i), (j), (k), and (l), respectively; and

(3) by inserting after subsection (e) the following new subsections:

"(f)(1) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

"(2) The contracting officer is required to debrief an excluded offeror in accordance with subsection (e) of this section only if that offeror requested and was refused a preaward debriefing under paragraph (1) of this subsection.

"(3) The debriefing conducted under this subsection shall include—

"(A) the executive agency's evaluation of the significant elements in the offeror's offer;

"(B) a summary of the rationale for the offeror's exclusion; and

"(C) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(4) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

"(g) The contracting officer shall include a summary of any debriefing conducted under subsection (e) or (f) in the contract file.

"(h) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.".

SEC. 4105. DESIGN-BUILD SELECTION PROCEDURES.

(a) ARMED SERVICES ACQUISITIONS.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2305 the following new section:

"§ 2305a. Design-build selection procedures

"(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (41 U.S.C. 541 et seq.) is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

"(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

"(1) The extent to which the project requirements have been adequately defined.

"(2) The time constraints for delivery of the project.

"(3) The capability and experience of potential contractors.

"(4) The suitability of the project for use of the two-phase selection procedures.

"(5) The capability of the agency to manage the two-phase selection process.

"(6) Other criteria established by the agency.

"(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

"(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).

"(2) The contracting officer solicits phase-one proposals that—

"(A) include information on the offeror's—

"(i) technical approach; and

"(ii) technical qualifications; and

"(B) do not include—

"(i) detailed design information; or

"(ii) cost or price information.

"(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

"(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

"(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

"(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with paragraphs (2), (3), and (4) of section 2305(a) of this title.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

"(5) The agency awards the contract in accordance with section 2305(b)(4) of this title.

"(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government's interest and is consistent with the purposes and objectives of the two-phase selection process.

"(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

"(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

"(2) regarding the factors that may be used in selecting contractors; and

"(3) providing for a uniform approach to be used Government-wide.".

(2) The table of sections at the beginning of chapter 137 of such title is amended by adding after the item relating to section 2305 the following new item:

"2305a. Design-build selection procedures.".

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303L the following new section:

"SEC. 303M. DESIGN-BUILD SELECTION PROCEDURES.

"(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (title IX of this Act) is used or another acquisition procedure authorized by law is used, the head of an executive agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

"(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

"(1) The extent to which the project requirements have been adequately defined.

"(2) The time constraints for delivery of the project.

"(3) The capability and experience of potential contractors.

"(4) The suitability of the project for use of the two-phase selection procedures.

"(5) The capability of the agency to manage the two-phase selection process.

"(6) Other criteria established by the agency.

"(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

"(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).

"(2) The contracting officer solicits phase-one proposals that—

"(A) include information on the offeror's—

"(i) technical approach; and

"(ii) technical qualifications; and

"(B) do not include—

"(i) detailed design information; or

"(ii) cost or price information.

"(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

"(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

"(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

"(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b), (c), and (d) of section 303A.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

"(5) The agency awards the contract in accordance with section 303B of this title.

"(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government's interest and is consistent with the purposes and objectives of the two-phase selection process.

"(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

"(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

"(2) regarding the factors that may be used in selecting contractors; and

"(3) providing for a uniform approach to be used Government-wide.".

(2) The table of sections at the beginning of such Act is amended by inserting after the item relating to section 303L the following new item:

"Sec. 303M. Design-build selection procedures.".

TITLE XLII—COMMERCIAL ITEMS

SEC. 4201. COMMERCIAL ITEM EXCEPTION TO REQUIREMENT FOR CERTIFIED COST OR PRICING DATA.

(a) ARMED SERVICES ACQUISITIONS.—(1) Subsections (b), (c), and (d) of section 2306a of title 10, United States Code, are amended to read as follows:

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

"(A) for which the price agreed upon is based on—

"(i) adequate price competition; or

"(ii) prices set by law or regulation;

"(B) for the acquisition of a commercial item; or

"(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

"(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

"(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

"(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

"(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of

the procuring activity shall justify in writing the reason for such requirement.

"(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

"(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this paragraph.

"(d) SUBMISSION OF OTHER INFORMATION.—

"(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the data submitted shall include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

"(2) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

"(A) Reasonable limitations on requests for sales data relating to commercial items.

"(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

"(C) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.".

(2) Section 2306a of such title is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Subsections (b), (c) and (d) of section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b) are amended to read as follows:

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or a modification of a contract or subcontract—

"(A) for which the price agreed upon is based on—

"(i) adequate price competition; or

"(ii) prices set by law or regulation;

"(B) for the acquisition of a commercial item; or

"(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

"(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

"(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

"(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

"(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

"(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

"(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate the functions under this paragraph.

"(d) SUBMISSION OF OTHER INFORMATION.—

"(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the data submitted shall include, at a minimum, appropriate information on the prices at which the same item or similar items have pre-

viously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

"(2) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

"(A) Reasonable limitations on requests for sales data relating to commercial items.

"(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

"(C) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.".

(2) Section 304A of such Act is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

SEC. 4202. APPLICATION OF SIMPLIFIED PROCEDURES TO CERTAIN COMMERCIAL ITEMS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304(g) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out "shall provide for special simplified procedures for purchases of" and all that follows through the end of the paragraph and inserting in lieu thereof the following: "shall provide for—

"(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

"(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items."; and

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

"(4) The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 31(g) of the Office of Federal Procurement Policy Act (41 U.S.C. 427).".

(2) Section 2305 of title 10, United States Code, is amended in subsection (a)(2) by inserting after "(other than for" the following: "a procurement for commercial items using special simplified procedures or".

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended—

(A) in paragraph (1), by striking out "shall provide for special simplified procedures for purchases of" and all that follows through the end of the paragraph and inserting in lieu thereof the following: "shall provide for—

"(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

"(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items."; and

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

"(5) An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 31(g) of the Office of Federal Procurement Policy Act (41 U.S.C. 427).".

(2) Section 303A of such Act (41 U.S.C. 253a) is amended in subsection (b) by inserting after "(other than for" the following: "a procurement for commercial items using special simplified procedures or".

(c) ACQUISITIONS GENERALLY.—Section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. 427) is amended—

(1) in subsection (a), by striking out "shall provide for special simplified procedures for purchases of" and all that follows through the end of the subsection and inserting in lieu thereof the following: "shall provide for—

"(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

"(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items."; and

(2) by adding at the end the following new subsection:

"(g) SPECIAL RULES FOR COMMERCIAL ITEMS.—The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items using special simplified procedures, an executive agency—

"(1) shall publish a notice in accordance with section 18 and, as provided in subsection (b)(4) of such section, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

"(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 2304 of title 10, United States Code, or section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), as applicable; and

"(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.".

(d) SIMPLIFIED NOTICE.—(1) Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—

(A) in subsection (a)(6), by inserting before "submission" the following: "issuance of solicitations and the"; and

(B) in subsection (b)(6), by striking out "threshold—" and inserting in lieu thereof "threshold, or a contract for the procurement of commercial items using special simplified procedures—".

(e) EFFECTIVE DATE.—The authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 303(g)(1) of the Federal Property and Administrative Services Act of 1949, and section 31(a) of the Office of Federal Procurement Policy Act, as amended by this section, shall expire three years after the date on which such amendments take effect pursuant to section 4401(b). Contracts may be awarded pursuant to solicitations that have been issued before such authority expires, notwithstanding the expiration of such authority.

SEC. 4203. INAPPLICABILITY OF CERTAIN PROCUREMENT LAWS TO COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS.

(a) LAWS LISTED IN THE FAR.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following:

"SEC. 35. COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEM ACQUISITIONS: LISTS OF INAPPLICABLE LAWS IN FEDERAL ACQUISITION REGULATION.

"(a) LISTS OF INAPPLICABLE PROVISIONS OF LAW.—(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items.

"(2) A provision of law that, pursuant to paragraph (3), is properly included on a list referred to in paragraph (1) may not be construed as being applicable to contracts referred to in paragraph (1). Nothing in this section shall be construed to render inapplicable to such contracts any provision of law that is not included on such list.

"(3) A provision of law described in subsection (b) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator for Federal Procurement Policy makes a written determination that it would not be in the best interest of the United States to exempt such contracts from the applicability of that provision of law. Nothing in this section shall be construed as modifying or superseding, or as being intended to impair or restrict authorities or responsibilities under—

"(A) section 15 of the Small Business Act (15 U.S.C. 644); or

"(B) bid protest procedures developed under the authority of subchapter V of chapter 35 of title 31, United States Code; subsections (e) and (f) of section 2305 of title 10, United States Code; or subsections (h) and (i) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b).

"(b) COVERED LAW.—Except as provided in subsection (a)(3), the list referred to in subsection (a)(1) shall include each provision of law that, as determined by the Administrator, imposes on persons who have been awarded contracts by the Federal Government for the procurement of commercially available off-the-shelf items Gov-

ernment-unique policies, procedures, requirements, or restrictions for the procurement of property or services, except the following:

"(1) A provision of law that provides for criminal or civil penalties.

"(2) A provision of law that specifically refers to this section and provides that, notwithstanding this section, such provision of law shall be applicable to contracts for the procurement of commercial off-the-shelf items.

"(c) DEFINITION.—(1) As used in this section, the term 'commercially available off-the-shelf item' means, except as provided in paragraph (2), an item that—

"(A) is a commercial item (as described in section 4(12)(A));

"(B) is sold in substantial quantities in the commercial marketplace; and

"(C) is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

"(2) The term 'commercially available off-the-shelf item' does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 34 the following:

"Sec. 35. Commercially available off-the-shelf item acquisitions: lists of inapplicable laws in Federal Acquisition Regulation.".

SEC. 4204. AMENDMENT OF COMMERCIAL ITEMS DEFINITION.

Section 4(12)(F) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(F)) is amended by inserting "or market" after "catalog".

SEC. 4205. INAPPLICABILITY OF COST ACCOUNTING STANDARDS TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.

Paragraph (2)(B) of section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)) is amended—

(1) by striking out clause (i) and inserting in lieu thereof the following:

"(i) Contracts or subcontracts for the acquisition of commercial items."; and

(2) by striking out clause (iii).

TITLE XLIII—ADDITIONAL REFORM PROVISIONS

Subtitle A—Additional Acquisition Reform Provisions

SEC. 4301. ELIMINATION OF CERTAIN CERTIFICATION REQUIREMENTS.

(a) ELIMINATION OF CERTAIN STATUTORY CERTIFICATION REQUIREMENTS.—(1) Section 2410b of title 10, United States Code, is amended in paragraph (2) by striking out "certification and".

(2) Section 1352(b)(2) of title 31, United States Code, is amended—

(A) by striking out subparagraph (C); and

(B) by inserting "and" after the semicolon at the end of subparagraph (A).

(3) Section 5152 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) is amended—

(A) in subsection (a)(1), by striking out "has certified to the contracting agency that it will" and inserting in lieu thereof "agrees to";

(B) in subsection (a)(2), by striking out "contract includes a certification by the individual" and inserting in lieu thereof "individual agrees"; and

(C) in subsection (b)(1)—

(i) by striking out subparagraph (A);

(ii) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph by striking out "such certification by failing to carry out"; and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(b) ELIMINATION OF CERTAIN REGULATORY CERTIFICATION REQUIREMENTS.—

(1) CURRENT CERTIFICATION REQUIREMENTS.—(A) Not later than 210 days after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

(ii) the Administrator approves in writing the retention of the certification requirement.

(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

(II) the head of the executive agency approves in writing the retention of such certification requirement.

(ii) For purposes of clause (i), the term "head of the executive agency" with respect to a military department means the Secretary of Defense.

(2) FUTURE CERTIFICATION REQUIREMENTS.—(A) Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is amended—

(i) by amending the heading to read as follows:

"SEC. 29. CONTRACT CLAUSES AND CERTIFICATIONS.";

(ii) by inserting "(a) NONSTANDARD CONTRACT CLAUSES.—" before "The Federal Acquisition"; and

(iii) by adding at the end the following new subsection:

"(c) PROHIBITION ON CERTIFICATION REQUIREMENTS.—(1) A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

"(A) the certification requirement is specifically imposed by statute; or

"(B) written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

"(2)(A) A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

"(i) the certification requirement is specifically imposed by statute; or

"(ii) written justification for such certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency, and the head of the executive agency approves in writing the inclusion of such certification requirement.

"(B) For purposes of subparagraph (A), the term 'head of the executive agency' with respect to a military department means the Secretary of Defense.".

(B) The item relating to section 29 in the table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) (41 U.S.C. 401 note) is amended to read as follows:

"Sec. 29. Contract clauses and certifications.".

(c) POLICY OF CONGRESS.—Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is further amended by adding after subsection (a) the following new subsection:

"(b) CONSTRUCTION OF CERTIFICATION REQUIREMENTS.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.".

SEC. 4302. AUTHORITIES CONDITIONED ON FACNET CAPABILITY.

(a) COMMENCEMENT AND EXPIRATION OF AUTHORITY TO CONDUCT CERTAIN TESTS OF PROCUREMENT PROCEDURES.—Subsection (j) of

section 5061 of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 413 note; 108 Stat. 3355) is amended to read as follows:

"(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on January 1, 1997, and shall expire on January 1, 2001. A contract entered into before such authority expires in an agency pursuant to a test shall remain in effect, in accordance with the terms of the contract, the notwithstanding of expiration the authority to conduct the test under this section.".

(b) USE OF SIMPLIFIED ACQUISITION PROCEDURES.—Subsection (e) of section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. 427) is amended—

(1) by striking out "ACQUISITION PROCEDURES.—" and all that follows through "(B) The simplified acquisition" in paragraph (2)(B) and inserting in lieu thereof "ACQUISITION PROCEDURES.—The simplified acquisition"; and

(2) by striking out "pursuant to this section" in the remaining text and inserting in lieu thereof "pursuant to section 2304(g)(1)(A) of title 10, United States Code, section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)), and subsection (a)(1) of this section".

SEC. 4303. INTERNATIONAL COMPETITIVENESS.

(a) ADDITIONAL AUTHORITY TO WAIVE RESEARCH, DEVELOPMENT, AND PRODUCTION COSTS.—Subject to subsection (b), section 21(e)(2) of the Arms Export Control Act (22 U.S.C. 2761(e)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

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

"(B) The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

"(i) imposition of the charge or charges likely would result in the loss of the sale; or

"(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

"(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.".

(b) CONDITIONS.—Subsection (a) shall be effective only if—

(1) the President, in the budget of the President for fiscal year 1997, proposes legislation that if enacted would be qualifying offsetting legislation; and

(2) there is enacted qualifying offsetting legislation.

(c) EFFECTIVE DATE.—If the conditions in subsection (b) are met, then the amendments made by subsection (a) shall take effect on the date of the enactment of qualifying offsetting legislation.

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

(1) The term "qualifying offsetting legislation" means legislation that includes provisions that—

(A) offset fully the estimated revenues lost as a result of the amendments made by subsection (a) for each of the fiscal years 1997 through 2005;

(B) expressly state that they are enacted for the purpose of the offset described in subparagraph (A); and

(C) are included in full on the PayGo scorecard.

(2) The term "PayGo scorecard" means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 4304. PROCUREMENT INTEGRITY.

(a) AMENDMENT OF PROCUREMENT INTEGRITY PROVISION.—Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended to read as follows:

"SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

"(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

"(2) Paragraph (1) applies to any person who—

"(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

"(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

"(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

"(c) ACTIONS REQUIRED OF PROCUREMENT OFFICERS WHEN CONTACTED BY OFFERORS REGARDING NON-FEDERAL EMPLOYMENT.—(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

"(A) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

"(B)(i) reject the possibility of non-Federal employment; or

"(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that—

"(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

"(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

"(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

"(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

"(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

"(d) PROHIBITION ON FORMER OFFICIAL'S ACCEPTANCE OF COMPENSATION FROM CONTRACTOR.—(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

"(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

"(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

"(C) personally made for the Federal agency—

"(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

"(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

"(iii) a decision to approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

"(iv) a decision to pay or settle a claim in excess of $10,000,000 with that contractor.

"(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

"(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

"(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

"(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

"(e) PENALTIES AND ADMINISTRATIVE ACTIONS.—

"(1) CRIMINAL PENALTIES.—Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

"(A) exchanging the information covered by such subsection for anything of value, or

"(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

"(2) CIVIL PENALTIES.—The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

"(3) ADMINISTRATIVE ACTIONS.—(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

"(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

"(ii) Rescission of a contract with respect to which—

"(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

"(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

"(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

"(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code, or other applicable law or regulation.

"(B) If a Federal agency rescinds a contract pursuant to subparagraph (A)(ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

"(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A)(iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

"(f) DEFINITIONS.—As used in this section:

"(1) The term 'contractor bid or proposal information' means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Cost or pricing data (as defined by section 2306a(h) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section).

"(B) Indirect costs and direct labor rates.

"(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

"(D) Information marked by the contractor as 'contractor bid or proposal information', in accordance with applicable law or regulation.

"(2) The term 'source selection information' means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

"(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

"(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

"(C) Source selection plans.

"(D) Technical evaluation plans.

"(E) Technical evaluations of proposals.

"(F) Cost or price evaluations of proposals.

"(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

"(H) Rankings of bids, proposals, or competitors.

"(I) The reports and evaluations of source selection panels, boards, or advisory councils.

"(J) Other information marked as 'source selection information' based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

"(3) The term 'Federal agency' has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

"(4) The term 'Federal agency procurement' means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

"(5) The term 'contracting officer' means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

"(6) The term 'protest' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31, United States Code.

"(7) The term 'official' means the following:

"(A) An officer, as defined in section 2104 of title 5, United States Code.

"(B) An employee, as defined in section 2105 of title 5, United States Code.

"(C) A member of the uniformed services, as defined in section 2101(3) of title 5, United States Code.

"(g) LIMITATION ON PROTESTS.—No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of subsection (a), (b), (c), or (d), nor may the Comptroller General of the United States consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement, no later than 14 days after the person first discovered the possible violation, the information that the person believed constitutes evidence of the offense.

"(h) SAVINGS PROVISIONS.—This section does not—

"(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

"(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

"(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

"(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

"(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

"(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation.".

(b) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789).

(3) Section 281 of title 18, United States Code.

(4) Subsection (c) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).

(5) The first section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918).

(6) Part A of title VI of the Department of Energy Organization Act and its catchline (42 U.S.C. 7211, 7212, and 7218).

(7) Section 308 of the Energy Research and Development Administration Appropriation Authorization Act for Fiscal Year 1977 (42 U.S.C. 5816a).

(8) Section 522 of the Energy Policy and Conservation Act (42 U.S.C. 6392).

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections at the beginning of chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) Section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) is amended by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

(4) The table of contents for the Department of Energy Organization Act is amended by striking out the items relating to part A of title VI including sections 601 through 603.

(5) The table of contents for the Energy Policy and Conservation Act is amended by striking out the item relating to section 522.

SEC. 4305. FURTHER ACQUISITION STREAMLINING PROVISIONS.

(a) PURPOSE OF OFFICE OF FEDERAL PROCUREMENT POLICY.—

(1) REVISED STATEMENT OF PURPOSE.—Section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404) is amended to read as follows:

"(a) There is in the Office of Management and Budget an Office of Federal Procurement Policy (hereinafter referred to as the 'Office') to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies and to promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.".

(2) REPEAL OF FINDINGS, POLICIES, AND PURPOSES.—Sections 2 and 3 of such Act (41 U.S.C. 401 and 402) are repealed.

(b) REPEAL OF REPORT REQUIREMENT.—Section 8 of the Office of Federal Procurement Policy Act (41 U.S.C. 407) is repealed.

(c) OBSOLETE PROVISIONS.—

(1) RELATIONSHIP TO FORMER REGULATIONS.—Section 10 of the Office of Federal Procurement Policy Act (41 U.S.C. 409) is repealed.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 11 of such Act (41 U.S.C. 410) is amended to read as follows:

"SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated for the Office of Federal Procurement Policy each fiscal year such sums as may be necessary for carrying out the responsibilities of that office for such fiscal year.".

(d) CLERICAL AMENDMENTS.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by striking out the items relating to sections 2, 3, 8, and 10.

SEC. 4306. VALUE ENGINEERING FOR FEDERAL AGENCIES.

(a) USE OF VALUE ENGINEERING.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4203, is further amended by adding at the end the following new section:

"SEC. 36. VALUE ENGINEERING.

"(a) IN GENERAL.—Each executive agency shall establish and maintain cost-effective value engineering procedures and processes.

"(b) DEFINITION.—As used in this section, the term 'value engineering' means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life cycle costs.".

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

"Sec. 36. Value engineering.".

SEC. 4307. ACQUISITION WORKFORCE.

(a) ACQUISITION WORKFORCE.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section

4306, is further amended by adding at the end the following new section:

"SEC. 37. ACQUISITION WORKFORCE.

"(a) APPLICABILITY.—This section does not apply to an executive agency that is subject to chapter 87 of title 10, United States Code.

"(b) MANAGEMENT POLICIES.—

"(1) POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5, United States Code.

"(2) UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

"(3) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

"(c) SENIOR PROCUREMENT EXECUTIVE AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

"(d) MANAGEMENT INFORMATION SYSTEMS.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards established by the Office of Personnel Management for the Central Personnel Data File.

"(e) APPLICABILITY TO ACQUISITION WORKFORCE.—The programs established by this section shall apply to the acquisition workforce of each executive agency. For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A).

"(f) CAREER DEVELOPMENT.—

"(1) CAREER PATHS.—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

"(2) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

"(3) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

"(4) PERFORMANCE INCENTIVES.—The head of each executive agency shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

"(A) relate pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 313(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 263(b))); and

"(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

"(g) QUALIFICATION REQUIREMENTS.—

"(1) IN GENERAL.—(A) Subject to paragraph (2), the Administrator shall establish qualification requirements, including education requirements, for the following positions:

"(i) Entry-level positions in the General Schedule Contracting series (GS–1102).

"(ii) Senior positions in the General Schedule Contracting series (GS–1102).

"(iii) All positions in the General Schedule Purchasing series (GS–1105).

"(iv) Positions in other General Schedule series in which significant acquisition-related functions are performed.

"(B) Subject to paragraph (2), the Administrator shall prescribe the manner and extent to which such qualification requirements shall apply to any person serving in a position described in subparagraph (A) at the time such requirements are established.

"(2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE ACQUISITION WORKFORCE.—The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10, United States Code, with appropriate modifications.

"(3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. If the Director does not disapprove a requirement or prescription within 30 days after the date on which the Director receives it, the requirement or prescription is deemed to be approved by the Director.

"(h) EDUCATION AND TRAINING.—

"(1) FUNDING LEVELS.—(A) The head of an executive agency shall set forth separately the funding levels requested for education and training of the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code.

"(B) Funds appropriated for education and training under this section may not be obligated for any other purpose.

"(2) TUITION ASSISTANCE.—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5, United States Code, for personnel serving in acquisition positions in the agency.".

(2) The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

"Sec. 37. Acquisition workforce.".

(b) ADDITIONAL AMENDMENTS.—Section 6(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 405), is amended—

(1) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) (as transferred by section 4321(h)(1)) as paragraphs (7), (8), (9), (10), (11), (12), and (13), respectively;

(2) in paragraph (5)—

(A) in subparagraph (A), by striking out "Government-wide career management programs for a professional procurement work force" and inserting in lieu thereof "the development of a professional acquisition workforce Government-wide"; and

(B) in subparagraph (B)—

(i) by striking out "procurement by the" and inserting in lieu thereof "acquisition by the";

(ii) by striking out "and" at the end of the subparagraph; and

(iii) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;

"(D) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

"(E) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

"(F) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

"(G) evaluate the effectiveness of training and career development programs for acquisition personnel;

"(H) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

"(I) facilitate, to the extent requested by agencies, interagency intern and training programs; and

"(J) perform other career management or research functions as directed by the Administrator."; and

(3) by inserting before paragraph (7) (as so redesignated) the following new paragraph (6):

"(6) administering the provisions of section 37;".

SEC. 4308. DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES.

(a) COMMENCEMENT.—The Secretary of Defense is encouraged to take such steps as may be necessary to provide for the commencement of a demonstration project, the purpose of which would be to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5, United States Code, and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) EXCEPTIONS.—Subject to paragraph (3), in applying section 4703 of title 5, United States Code, with respect to a demonstration project described in subsection (a)—

(A) "180 days" in subsection (b)(4) of such section shall be deemed to read "120 days";

(B) "90 days" in subsection (b)(6) of such section shall be deemed to read "30 days"; and

(C) subsection (d)(1)(A) of such section shall be disregarded.

(3) CONDITION.—Paragraph (2) shall not apply with respect to a demonstration project unless it—

(A) involves only the acquisition workforce of the Department of Defense (or any part thereof); and

(B) commences during the 3-year period beginning on the date of the enactment of this Act.

(c) DEFINITION.—For purposes of this section, the term "acquisition workforce" refers to the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of title 10, United States Code.

SEC. 4309. COOPERATIVE PURCHASING.

(a) DELAY IN OPENING CERTAIN FEDERAL SUPPLY SCHEDULES TO USE BY STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS.—The Administrator of General Services may not use the authority of section 201(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(b)(2)) to provide for the use of Federal supply schedules of the General Services Administration until after the later of—

(1) the date on which the 18-month period beginning on the date of the enactment of this Act expires; or

(2) the date on which all of the following conditions are met:

(A) The Administrator has considered the report of the Comptroller General required by subsection (b).

(B) The Administrator has submitted comments on such report to Congress as required by subsection (c).

(C) A period of 30 days after the date of submission of such comments to Congress has expired.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the Administrator of General Services and to Congress a report on the implementation of section 201(b) of the Federal Property and Administrative Services Act of 1949. The report shall include the following:

(1) An assessment of the effect on industry, including small businesses and local dealers, of providing for the use of Federal supply schedules by the entities described in section 201(b)(2)(A) of the Federal Property and Administrative Services Act of 1949.

(2) An assessment of the effect on such entities of providing for the use of Federal supply schedules by them.

(c) COMMENTS ON REPORT BY ADMINISTRATOR.—Not later than 30 days after receiving the report of the Comptroller General required by subsection (b), the Administrator of General Services shall submit to Congress comments on the report, including the Administrator's comments on whether the Administrator plans to provide any Federal supply schedule for the use of any entity described in section 201(b)(2)(A) of the Federal Property and Administrative Services Act of 1949.

(d) CALCULATION OF 30-DAY PERIOD.—For purposes of subsection (a)(2)(C), the calculation of the 30-day period shall exclude Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days.

SEC. 4310. PROCUREMENT NOTICE TECHNICAL AMENDMENT.

Section 18(c)(1)(E) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)(1)(E)) is amended by inserting after "requirements contract" the following: ", a task order contract, or a delivery order contract".

SEC. 4311. MICRO-PURCHASES WITHOUT COMPETITIVE QUOTATIONS.

Section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428), as redesignated by section 4304(c)(3), is amended by striking out "the contracting officer" and inserting in lieu thereof "an employee of an executive agency or a member of the Armed Forces of the United States authorized to do so".

Subtitle B—Technical Amendments

SEC. 4321. AMENDMENTS RELATED TO FEDERAL ACQUISITION STREAMLINING ACT OF 1994.

(a) PUBLIC LAW 103–355.—Effective as of October 13, 1994, and as if included therein as enacted, the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3243 et seq.) is amended as follows:

(1) Section 1073 (108 Stat. 3271) is amended by striking out "section 303I" and inserting in lieu thereof "section 303K".

(2) Section 1202(a) (108 Stat. 3274) is amended by striking out the closing quotation marks and second period at the end of paragraph (2)(B) of the subsection inserted by the amendment made by that section.

(3) Section 1251(b) (108 Stat. 3284) is amended by striking out "Office of Federal Procurement Policy Act" and inserting in lieu thereof "Federal Property and Administrative Services Act of 1949".

(4) Section 2051(e) (108 Stat. 3304) is amended by striking out the closing quotation marks and second period at the end of subsection (f)(3) in the matter inserted by the amendment made by that section.

(5) Section 2101(a)(6)(B)(ii) (108 Stat. 3308) is amended by replacing "regulation" with "regulations" in the first quoted matter.

(6) Section 2351(a) (108 Stat. 3322) is amended by inserting "(1)" before "Section 6".

(7) The heading of section 2352(b) (108 Stat. 3322) is amended by striking out "PROCEDURES TO SMALL BUSINESS GOVERNMENT CONTRACTORS.—" and inserting in lieu thereof "PROCEDURES.—".

(8) Section 3022 (108 Stat. 3333) is amended by striking out "each place" and all that follows through the end of the section and inserting in lieu thereof "in paragraph (1) and ', rent,' after 'sell' in paragraph (2).".

(9) Section 5092(b) (108 Stat. 3362) is amended by inserting "of paragraph (2)" after "second sentence".

(10) Section 6005(a) (108 Stat. 3364) is amended by striking out the closing quotation marks and second period at the end of subsection (e)(2) of the matter inserted by the amendment made by that section.

(11) Section 10005(f)(4) (108 Stat. 3409) is amended in the second matter in quotation marks by striking out "'SEC. 5. This Act" and inserting in lieu thereof "'SEC. 7. This title".

(b) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(1) Section 2220(b) is amended by striking out "the date of the enactment of the Federal Acquisition Streamlining Act of 1994" and inserting in lieu thereof "October 13, 1994".

(2)(A) The section 2247 added by section 7202(a)(1) of Public Law 103–355 (108 Stat. 3379) is redesignated as section 2249.

(B) The item relating to that section in the table of sections at the beginning of subchapter I of chapter 134 is revised to conform to the redesignation made by subparagraph (A).

(3) Section 2302(3)(K) is amended by adding a period at the end.

(4) Section 2304(f)(2)(D) is amended by striking out "the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act," and inserting in lieu thereof "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.),".

(5) Section 2304(h) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) The Walsh-Healey Act (41 U.S.C. 35 et seq.).".

(6)(A) The section 2304a added by section 848(a)(1) of Public Law 103–160 (107 Stat. 1724) is redesignated as section 2304e.

(B) The item relating to that section in the table of sections at the beginning of chapter 137 is revised to conform to the redesignation made by subparagraph (A).

(7) Section 2306a is amended—

(A) in subsection (d)(2)(A)(ii), by inserting "to" after "The information referred";

(B) in subsection (e)(4)(B)(ii), by striking out the second comma after "parties"; and

(C) in subsection (i)(3), by inserting "(41 U.S.C. 403(12))" before the period at the end.

(8) Section 2323 is amended—

(A) in subsection (a)(1)(C), by inserting a closing parenthesis after "1135d–5(3))" and after "1059c(b)(1))";

(B) in subsection (a)(3), by striking out "(issued under" and all that follows through "421(c))";

(C) in subsection (b), by inserting "(1)" after "AMOUNT.—"; and

(D) in subsection (i)(3), by adding at the end a subparagraph (D) identical to the subparagraph (D) set forth in the amendment made by section 811(e) of Public Law 103–160 (107 Stat. 1702).

(9) Section 2324 is amended—

(A) in subsection (e)(2)(C)—

(i) by striking out "awarding the contract" at the end of the first sentence; and

(ii) by striking out "title III" and all that follows through "Act)" and inserting in lieu thereof "the Buy American Act (41 U.S.C. 10b–1)"; and

(B) in subsection (h)(2), by inserting "the head of the agency or" after "in the case of any contract if".

(10) Section 2350b is amended—

(A) in subsection (c)(1)—

(i) by striking out "specifically—" and inserting in lieu thereof "specifically prescribes—"; and

(ii) by striking out "prescribe" in each of subparagraphs (A), (B), (C), and (D); and

(B) in subsection (d)(1), by striking out "subcontract to be" and inserting in lieu thereof "subcontract be".

(11) Section 2372(i)(1) is amended by striking out "section 2324(m)" and inserting in lieu thereof "section 2324(l)".

(12) Section 2384(b) is amended—

(A) in paragraph (2)—

(i) by striking "items, as" and inserting in lieu thereof "items (as"; and

(ii) by inserting a closing parenthesis after "403(12))"; and

(B) in paragraph (3), by inserting a closing parenthesis after "403(11))".

(13) Section 2400(a)(5) is amended by striking out "the preceding sentence" and inserting in lieu thereof "this paragraph".

(14) Section 2405 is amended—

(A) in paragraphs (1) and (2) of subsection (a), by striking out "the date of the enactment of the Federal Acquisition Streamlining Act of 1994" and inserting in lieu thereof "October 13, 1994"; and

(B) in subsection (c)(3)—

(i) by striking out "the later of—" and all that follows through "(B)"; and

(ii) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and realigning those subparagraphs accordingly.

(15) Section 2410d(b) is amended by striking out paragraph (3).

(16) Section 2410g(d)(1) is amended by inserting before the period at the end the following: "(as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))".

(17) Section 2424(c) is amended—

(A) by inserting "EXCEPTION.—" after "(c)"; and

(B) by striking out "drink" the first and third places it appears in the second sentence and inserting in lieu thereof "beverage".

(18) Section 2431 is amended—

(A) in subsection (b)—

(i) by striking out "Any report" in the first sentence and inserting in lieu thereof "Any documents"; and

(ii) by striking out "the report" in paragraph (3) and inserting in lieu thereof "the documents"; and

(B) in subsection (c), by striking "reporting" and inserting in lieu thereof "documentation".

(19) Section 2461(e)(1) is amended by striking out "the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Wagner-O'Day Act" and inserting in lieu thereof "the Javits-Wagner-O'Day Act (41 U.S.C. 47)".

(20) Section 2533(a) is amended by striking out "title III of the Act" and all that follows through "such Act" and inserting in lieu thereof "the Buy American Act (41 U.S.C. 10a)) whether application of such Act".

(21) Section 2662(b) is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

(22) Section 2701(i)(1) is amended—

(A) by striking out "Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act'," and inserting in lieu thereof "Miller Act (40 U.S.C. 270a et seq.)"; and

(B) by striking out "such Act of August 24, 1935" and inserting in lieu thereof "the Miller Act".

(c) SMALL BUSINESS ACT.—The Small Business Act (15 U.S.C. 632 et seq.) is amended as follows:

(1) Section 8(d) (15 U.S.C. 637(d)) is amended—

(A) in paragraph (1), by striking out the second comma after "small business concerns" the first place it appears; and

(B) in paragraph (6)(C), by striking out "and small business concerns owned and controlled by the socially and economically disadvantaged individuals" and inserting in lieu thereof ", small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women".

(2) Section 8(f) (15 U.S.C. 637(f)) is amended by inserting "and" after the semicolon at the end of paragraph (5).

(3) Section 15(g)(2) (15 U.S.C. 644(g)(2)) is amended by striking out the second comma after the first appearance of "small business concerns".

(d) TITLE 31, UNITED STATES CODE.—Title 31, United States Code, is amended as follows:

(1) Section 3551 is amended—

(A) by striking out "subchapter—" and inserting in lieu thereof "subchapter:"; and

(B) in paragraph (2), by striking out "or proposed contract" and inserting in lieu thereof "or a solicitation or other request for offers".

(2) Section 3553(b)(3) is amended by striking out "3554(a)(3)" and inserting in lieu thereof "3554(a)(4)".

(3) Section 3554(b)(2) is amended by striking out "section 3553(d)(2)(A)(i)" and inserting in lieu thereof "section 3553(d)(3)(C)(i)(I)".

(e) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—The Federal Property and Administrative Services Act of 1949 is amended as follows:

(1) The table of contents in section 1 (40 U.S.C. 471 prec.) is amended—

(A) by striking out the item relating to section 104;

(B) by striking out the item relating to section 201 and inserting in lieu thereof the following:

"Sec. 201. Procurements, warehousing, and related activities.";

(C) by inserting after the item relating to section 315 the following new item:

"Sec. 316. **Merit-based award of grants for research and development.**";

(D) by striking out the item relating to section 603 and inserting in lieu thereof the following:

"Sec. 603. **Authorizations for appropriations and transfer authority.**";

and

(E) by inserting after the item relating to section 605 the following new item:

"Sec. 606. **Sex discrimination.**".

(2) Section 303(f)(2)(D) (41 U.S.C. 253(f)(2)(D)) is amended by striking out "the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act," and inserting in lieu thereof "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.),".

(3) The heading for paragraph (1) of section 304A(c) (41 U.S.C. 254b(c)) is amended by changing each letter that is capitalized (other than the first letter of the first word) to lower case.

(4) Subsection (d)(2)(A)(ii) of section 304A (41 U.S.C. 254b) is amended by inserting "to" after "The information referred".

(5) Section 304C(a)(2) is amended by striking out "section 304B" and inserting in lieu thereof "section 304A".

(6) Section 307(b) is amended by striking out "section 305(c)" and inserting in lieu thereof "section 305(d)".

(7) The heading for section 314A (41 U.S.C. 264a) is amended to read as follows:

"SEC. 314A. **DEFINITIONS RELATING TO PROCUREMENT OF COMMERCIAL ITEMS.**".

(8) Section 315(b) (41 U.S.C. 265(b)) is amended by striking out "inspector general" both places it appears and inserting in lieu thereof "Inspector General".

(9) The heading for section 316 (41 U.S.C. 266) is amended by inserting at the end a period.

(f) WALSH-HEALEY ACT.—

(1) The Walsh-Healey Act (41 U.S.C. 35 et seq.) is amended—

(A) by transferring the second section 11 (as added by section 7201(4) of Public Law 103–355) so as to appear after section 10; and

(B) by redesignating the three sections following such section 11 (as so transferred) as sections 12, 13, and 14.

(2) Such Act is further amended in section 10—

(A) in subsection (b), by striking out "section 1(b)" and inserting in lieu thereof "section 1(a)"; and

(B) in subsection (c), by striking out the comma after "'locality'".

(g) ANTI-KICKBACK ACT OF 1986.—Section 7(d) of the Anti-Kickback Act of 1986 (41 U.S.C. 57(d)) is amended—

(1) by striking out "such Act" and inserting in lieu thereof "the Office of Federal Procurement Policy Act"; and

(2) by striking out the second period at the end.

(h) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended as follows:

(1) Section 6 (41 U.S.C. 405) is amended by transferring paragraph (12) of subsection (d) (as such paragraph was redesignated by section 5091(2) of the Federal Acquisition Streamlining Act of 1994 (P.L. 103–355; 108 Stat. 3361)) to the end of that subsection.

(2) Section 6(11) (41 U.S.C. 405(11)) is amended by striking out "small business" and inserting in lieu thereof "small businesses".

(3) Section 18(b) (41 U.S.C. 416(b)) is amended by inserting "and" after the semicolon at the end of paragraph (5).

(4) Section 26(f)(3) (41 U.S.C. 422(f)(3)) is amended in the first sentence by striking out "Not later than 180 days after the date of enactment of this section, the Administrator" and inserting in lieu thereof "The Administrator".

(i) OTHER LAWS.—

(1) The National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) is amended as follows:

(A) Section 126(c) (107 Stat. 1567) is amended by striking out "section 2401 of title 10, United States Code, or section 9081 of the Department of Defense Appropriations Act, 1990 (10 U.S.C. 2401 note)." and inserting in lieu thereof "section 2401 or 2401a of title 10, United States Code.".

(B) Section 127 (107 Stat. 1568) is amended—

(i) in subsection (a), by striking out "section 2401 of title 10, United States Code, or section 9081 of the Department of Defense Appropriations Act, 1990 (10 U.S.C. 2401 note)." and inserting in lieu thereof "section 2401 or 2401a of title 10, United States Code."; and

(ii) in subsection (e), by striking out "section 9081 of the Department of Defense Appropriations Act, 1990 (10 U.S.C. 2401 note)." and inserting in lieu thereof "section 2401a of title 10, United States Code.".

(2) The National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189) is amended by striking out section 824.

(3) Section 117 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 10 U.S.C. 2431 note) is amended by striking out subsection (c).

(4) The National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180) is amended by striking out section 825 (10 U.S.C. 2432 note).

(5) Section 11 of Public Law 101–552 (5 U.S.C. 581 note) is amended by inserting "under" before "the amendments made by this Act".

(6) The last sentence of section 6 of the Federal Power Act (16 U.S.C. 799) is repealed.

(7) Section 101(a)(11)(A) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)(A)) is amended by striking out "the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (commonly known as the Wagner-O'Day Act; 41 U.S.C. 46 et

seq.)" and inserting in lieu thereof "the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)".

(8) The first section 5 of the Miller Act (40 U.S.C. 270a note) is redesignated as section 7 and, as so redesignated, is transferred to the end of that Act.

(9) Section 3737(g) of the Revised Statutes of the United States (41 U.S.C. 15(g)) is amended by striking out "rights of obligations" and inserting in lieu thereof "rights or obligations".

(10) The Act of June 15, 1940 (41 U.S.C. 20a; Chapter 367; 54 Stat. 398), is repealed.

(11) The Act of November 28, 1943 (41 U.S.C. 20b; Chapter 328; 57 Stat. 592), is repealed.

(12) Section 3741 of the Revised Statutes of the United States (41 U.S.C. 22), as amended by section 6004 of Public Law 103–355 (108 Stat. 3364), is amended by striking out "No member" and inserting in lieu thereof "SEC. 3741. No Member".

(13) Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701(a)(1)) is amended by striking out "as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)" and inserting in lieu thereof "(as defined in section 4(12) of such Act (41 U.S.C. 403(12)))".

SEC. 4322. MISCELLANEOUS AMENDMENTS TO FEDERAL ACQUISITION LAWS.

(a) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended as follows:

(1) Section 6(b) (41 U.S.C. 405(b)) is amended by striking out the second comma after "under subsection (a)" in the first sentence.

(2) Section 25(b)(2) (41 U.S.C. 421(b)(2)) is amended by striking out "Under Secretary of Defense for Acquisition" and inserting in lieu thereof "Under Secretary of Defense for Acquisition and Technology".

(b) OTHER LAWS.—

(1) Section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking out the second comma after "Community Service".

(2) Section 908(e) of the Defense Acquisition Improvement Act of 1986 (10 U.S.C. 2326 note) is amended by striking out "section 2325(g)" and inserting in lieu thereof "section 2326(g)".

(3) Effective as of August 9, 1989, and as if included therein as enacted, Public Law 101–73 is amended in section 501(b)(1)(A) (103 Stat. 393) by striking out "be," and inserting in lieu thereof "be;" in the second quoted matter therein.

(4) Section 3732(a) of the Revised Statutes of the United States (41 U.S.C. 11(a)) is amended by striking out the second comma after "quarters".

(5) Section 2 of the Contract Disputes Act of 1978 (41 U.S.C. 601) is amended in paragraphs (3), (5), (6), and (7), by striking out "The" and inserting in lieu thereof "the".

(6) Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended in subsections (d) and (e) by inserting after

"United States Code" each place it appears the following: "(as in effect on September 30, 1995)".

(7) Section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) is amended—

(A) in subsection (a), by striking out "section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a)" and inserting in lieu thereof "section 1304 of title 31, United States Code"; and

(B) in subsection (c), by striking out "section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a)" and inserting in lieu thereof "section 1304 of title 31, United States Code,".

TITLE XLIV—EFFECTIVE DATES AND IMPLEMENTATION

SEC. 4401. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as otherwise provided in this division, this division and the amendments made by this division shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY OF AMENDMENTS.—

(1) SOLICITATIONS, UNSOLICITED PROPOSALS, AND RELATED CONTRACTS.—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) OTHER MATTERS.—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) DEMARCATION DATE.—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30 days after the date on which such final regulations are published.

SEC. 4402. IMPLEMENTING REGULATIONS.

(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this Act shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this Act may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) SAVINGS PROVISIONS.—

(1) VALIDITY OF PRIOR ACTIONS.—Nothing in this division shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 4401(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) RENEGOTIATION AND MODIFICATION OF PREEXISTING CONTRACTS.—Except as specifically provided in this division, nothing in this division shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) CONTINUED APPLICABILITY OF PREEXISTING LAW.—Except as otherwise provided in this division, a law amended by this division shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, January 1, 1997.

DIVISION E—INFORMATION TECHNOLOGY MANAGEMENT REFORM

SEC. 5001. SHORT TITLE.

This division may be cited as the "Information Technology Management Reform Act of 1996".

SEC. 5002. DEFINITIONS.

In this division:

(1) DIRECTOR.—The term "Director" means the Director of the Office of Management and Budget.

(2) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(3) INFORMATION TECHNOLOGY.—(A) The term "information technology", with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the

equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(B) The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(C) Notwithstanding subparagraphs (A) and (B), the term "information technology" does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

(4) INFORMATION RESOURCES.—The term "information resources" has the meaning given such term in section 3502(6) of title 44, United States Code.

(5) INFORMATION RESOURCES MANAGEMENT.—The term "information resources management" has the meaning given such term in section 3502(7) of title 44, United States Code.

(6) INFORMATION SYSTEM.—The term "information system" has the meaning given such term in section 3502(8) of title 44, United States Code.

(7) COMMERCIAL ITEM.—The term "commercial item" has the meaning given that term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

TITLE LI—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

Subtitle A—General Authority

SEC. 5101. REPEAL OF CENTRAL AUTHORITY OF THE ADMINISTRATOR OF GENERAL SERVICES.

Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is repealed.

Subtitle B—Director of the Office of Management and Budget

SEC. 5111. RESPONSIBILITY OF DIRECTOR.

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the Director shall comply with this title with respect to the specific matters covered by this title.

SEC. 5112. CAPITAL PLANNING AND INVESTMENT CONTROL.

(a) FEDERAL INFORMATION TECHNOLOGY.—The Director shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44, United States Code.

(b) USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.—The Director shall promote and be responsible for improving the

acquisition, use, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) USE OF BUDGET PROCESS.—The Director shall develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks associated with the investments. At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, United States Code, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies in information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) INFORMATION TECHNOLOGY STANDARDS.—The Director shall oversee the development and implementation of standards and guidelines pertaining to Federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 5131 and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

(e) DESIGNATION OF EXECUTIVE AGENTS FOR ACQUISITIONS.—The Director shall designate (as the Director considers appropriate) one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.

(f) USE OF BEST PRACTICES IN ACQUISITIONS.—The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) ASSESSMENT OF OTHER MODELS FOR MANAGING INFORMATION TECHNOLOGY.—The Director shall assess, on a continuing basis, the experiences of executive agencies, State and local governments, international organizations, and the private sector in managing information technology.

(h) COMPARISON OF AGENCY USES OF INFORMATION TECHNOLOGY.—The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) TRAINING.—The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) INFORMING CONGRESS.—The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of agency missions through the use of the best practices in information resources management.

(k) PROCUREMENT POLICY AND ACQUISITIONS OF INFORMATION TECHNOLOGY.—The Director shall coordinate the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with Federal acquisition of information technology with the Office of Federal Procurement Policy.

SEC. 5113. PERFORMANCE-BASED AND RESULTS-BASED MANAGEMENT.

(a) IN GENERAL.—The Director shall encourage the use of performance-based and results-based management in fulfilling the responsibilities assigned under section 3504(h), of title 44, United States Code.

(b) EVALUATION OF AGENCY PROGRAMS AND INVESTMENTS.—

(1) REQUIREMENT.—The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) DIRECTION FOR EXECUTIVE AGENCY ACTION.—The Director shall issue to the head of each executive agency clear and concise direction that the head of such agency shall—

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system—

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization; or

(ii) whether the function should be performed by the executive agency and, if so, whether the function should be performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) GUIDANCE FOR MULTIAGENCY INVESTMENTS.—The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) PERIODIC REVIEWS.—The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies in order to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) ENFORCEMENT OF ACCOUNTABILITY.—

(A) IN GENERAL.—The Director may take any authorized action that the Director considers appropriate, including an action involving the budgetary process or appropria-

tions management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) SPECIFIC ACTIONS.—Actions taken by the Director in the case of an executive agency may include—

(i) recommending a reduction or an increase in any amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of title 31, United States Code;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other authorized administrative controls over appropriations to restrict the availability of funds for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

Subtitle C—Executive Agencies

SEC. 5121. RESPONSIBILITIES.

In fulfilling the responsibilities assigned under chapter 35 of title 44, United States Code, the head of each executive agency shall comply with this subtitle with respect to the specific matters covered by this subtitle.

SEC. 5122. CAPITAL PLANNING AND INVESTMENT CONTROL.

(a) DESIGN OF PROCESS.—In fulfilling the responsibilities assigned under section 3506(h) of title 44, United States Code, the head of each executive agency shall design and implement in the executive agency a process for maximizing the value and assessing and managing the risks of the information technology acquisitions of the executive agency.

(b) CONTENT OF PROCESS.—The process of an executive agency shall—

(1) provide for the selection of information technology investments to be made by the executive agency, the management of such investments, and the evaluation of the results of such investments;

(2) be integrated with the processes for making budget, financial, and program management decisions within the executive agency;

(3) include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk-adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;

(4) provide for identifying information systems investments that would result in shared benefits or costs for other Federal agencies or State or local governments;

(5) provide for identifying for a proposed investment quantifiable measurements for determining the net benefits and risks of the investment; and

(6) provide the means for senior management personnel of the executive agency to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

SEC. 5123. PERFORMANCE AND RESULTS-BASED MANAGEMENT.

In fulfilling the responsibilities under section 3506(h) of title 44, United States Code, the head of an executive agency shall—

(1) establish goals for improving the efficiency and effectiveness of agency operations and, as appropriate, the delivery of services to the public through the effective use of information technology;

(2) prepare an annual report, to be included in the executive agency's budget submission to Congress, on the progress in achieving the goals;

(3) ensure that performance measurements are prescribed for information technology used by or to be acquired for, the executive agency and that the performance measurements measure how well the information technology supports programs of the executive agency;

(4) where comparable processes and organizations in the public or private sectors exist, quantitatively benchmark agency process performance against such processes in terms of cost, speed, productivity, and quality of outputs and outcomes;

(5) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes as appropriate before making significant investments in information technology that is to be used in support of the performance of those missions; and

(6) ensure that the information security policies, procedures, and practices of the executive agency are adequate.

SEC. 5124. ACQUISITIONS OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—The authority of the head of an executive agency to conduct an acquisition of information technology includes the following authorities:

(1) To acquire information technology as authorized by law.

(2) To enter into a contract that provides for multiagency acquisitions of information technology in accordance with guidance issued by the Director.

(3) If the Director finds that it would be advantageous for the Federal Government to do so, to enter into a multiagency contract for procurement of commercial items of information technology that requires each executive agency covered by the contract, when procuring such items, either to procure the

items under that contract or to justify an alternative procurement of the items.

(b) FTS 2000 PROGRAM.—Notwithstanding any other provision of this or any other law, the Administrator of General Services shall continue to manage the FTS 2000 program, and to coordinate the follow-on to that program, on behalf of and with the advice of the heads of executive agencies.

SEC. 5125. AGENCY CHIEF INFORMATION OFFICER.

(a) DESIGNATION OF CHIEF INFORMATION OFFICERS.—Section 3506 of title 44, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking out "senior official" and inserting in lieu thereof "Chief Information Officer";

(B) in paragraph (2)(B)—

(i) by striking out "senior officials" in the first sentence and inserting in lieu thereof "Chief Information Officers";

(ii) by striking out "official" in the second sentence and inserting in lieu thereof "Chief Information Officer"; and

(iii) by striking out "officials" in the second sentence and inserting in lieu thereof "Chief Information Officers"; and

(C) in paragraphs (3) and (4), by striking out "senior official" each place it appears and inserting in lieu thereof "Chief Information Officer"; and

(2) in subsection (c)(1), by striking out "official" in the matter preceding subparagraph (A) and inserting in lieu thereof "Chief Information Officer".

(b) GENERAL RESPONSIBILITIES.—The Chief Information Officer of an executive agency shall be responsible for—

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this division, consistent with chapter 35 of title 44, United States Code, and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency; and

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

(c) DUTIES AND QUALIFICATIONS.—The Chief Information Officer of an agency that is listed in section 901(b) of title 31, United States Code, shall—

(1) have information resources management duties as that official's primary duty;

(2) monitor the performance of information technology programs of the agency, evaluate the performance of those programs on the basis of the applicable performance measure-

ments, and advise the head of the agency regarding whether to continue, modify, or terminate a program or project; and

(3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of title 31, United States Code) under section 306 of title 5, United States Code, and sections 1105(a)(29), 1115, 1116, 1117, and 9703 of title 31, United States Code—

(A) assess the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for information resources management;

(B) assess the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level meet those requirements;

(C) in order to rectify any deficiency in meeting those requirements, develop strategies and specific plans for hiring, training, and professional development; and

(D) report to the head of the agency on the progress made in improving information resources management capability.

(d) INFORMATION TECHNOLOGY ARCHITECTURE DEFINED.—In this section, the term "information technology architecture", with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

(e) EXECUTIVE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chief Information Officer, Department of Agriculture.

"Chief Information Officer, Department of Commerce.

"Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).

"Chief Information Officer, Department of Education.

"Chief Information Officer, Department of Energy.

"Chief Information Officer, Department of Health and Human Services.

"Chief Information Officer, Department of Housing and Urban Development.

"Chief Information Officer, Department of Interior.

"Chief Information Officer, Department of Justice.

"Chief Information Officer, Department of Labor.

"Chief Information Officer, Department of State.

"Chief Information Officer, Department of Transportation.

"Chief Information Officer, Department of Treasury.

"Chief Information Officer, Department of Veterans Affairs.

"Chief Information Officer, Environmental Protection Agency.

"Chief Information Officer, National Aeronautics and Space Administration.

"Chief Information Officer, Agency for International Development.

"Chief Information Officer, Federal Emergency Management Agency.

"Chief Information Officer, General Services Administration.

"Chief Information Officer, National Science Foundation.

"Chief Information Officer, Nuclear Regulatory Agency.

"Chief Information Officer, Office of Personnel Management.

"Chief Information Officer, Small Business Administration.".

SEC. 5126. ACCOUNTABILITY.

The head of each executive agency, in consultation with the Chief Information Officer and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a Chief Financial Officer, any comparable official), shall establish policies and procedures that—

(1) ensure that the accounting, financial, and asset management systems and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;

(2) ensure that financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and

(3) ensure that financial statements support—

(A) assessments and revisions of mission-related processes and administrative processes of the executive agency; and

(B) performance measurement of the performance in the case of investments made by the agency in information systems.

SEC. 5127. SIGNIFICANT DEVIATIONS.

The head of an executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of title 44, United States Code, any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

SEC. 5128. INTERAGENCY SUPPORT.

Funds available for an executive agency for oversight, acquisition, and procurement of information technology may be used by the head of the executive agency to support jointly with other executive agencies the activities of interagency groups that are established to advise the Director in carrying out the Director's responsibilities under this title. The use of such funds for that purpose shall be subject to such requirements and limitations on uses and amounts as the Director may prescribe. The Director shall prescribe any such requirements and limitations during the Director's review of the executive agency's proposed budget submitted to the Director by the head of the executive agency for purposes of section 1105 of title 31, United States Code.

Subtitle D—Other Responsibilities

SEC. 5131. RESPONSIBILITIES REGARDING EFFICIENCY, SECURITY, AND PRIVACY OF FEDERAL COMPUTER SYSTEMS.

(a) STANDARDS AND GUIDELINES.—

(1) AUTHORITY.—The Secretary of Commerce shall, on the basis of standards and guidelines developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)), promulgate standards and guidelines pertaining to Federal computer systems. The Secretary shall make such standards compulsory and binding to the extent to which the Secretary determines necessary to improve the efficiency of operation or security and privacy of Federal computer systems. The President may disapprove or modify such standards and guidelines if the President determines such action to be in the public interest. The President's authority to disapprove or modify such standards and guidelines may not be delegated. Notice of such disapproval or modification shall be published promptly in the Federal Register. Upon receiving notice of such disapproval or modification, the Secretary of Commerce shall immediately rescind or modify such standards or guidelines as directed by the President.

(2) EXERCISE OF AUTHORITY.—The authority conferred upon the Secretary of Commerce by this section shall be exercised subject to direction by the President and in coordination with the Director to ensure fiscal and policy consistency.

(b) APPLICATION OF MORE STRINGENT STANDARDS.—The head of a Federal agency may employ standards for the cost-effective security and privacy of sensitive information in a Federal computer system within or under the supervision of that agency that are more stringent than the standards promulgated by the Secretary of Commerce under this section, if such standards contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Secretary of Commerce.

(c) WAIVER OF STANDARDS.—The standards determined under subsection (a) to be compulsory and binding may be waived by the Secretary of Commerce in writing upon a determination that compliance would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or cause a major adverse financial impact on the operator which is not offset by Government-wide savings. The Secretary may delegate to the head of one or more Federal agencies authority to waive such standards to the extent to which the Secretary determines such action to be necessary and desirable to allow for timely and effective implementation of Federal computer system standards. The head of such agency may redelegate such authority only to a Chief Information Officer designated pursuant to section 3506 of title 44, United States Code. Notice of each such waiver and delegation shall be transmitted promptly to Congress and shall be published promptly in the Federal Register.

(d) DEFINITIONS.—In this section, the terms "Federal computer system" and "operator of a Federal computer system" have the

meanings given such terms in section 20(d) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(d)).

(e) TECHNICAL AMENDMENTS.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3504(g)—

(A) in paragraph (2), by striking out "the Computer Security Act of 1987 (40 U.S.C. 759 note)" and inserting in lieu thereof "sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4), section 5131 of the Information Technology Management Reform Act of 1996, and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)"; and

(B) in paragraph (3), by striking out "the Computer Security Act of 1987 (40 U.S.C. 759 note)" and inserting in lieu thereof "the standards and guidelines promulgated under section 5131 of the Information Technology Management Reform Act of 1996 and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)"; and

(2) in section 3518(d), by striking out "Public Law 89–306 on the Administrator of the General Services Administration, the Secretary of Commerce, or" and inserting in lieu thereof "section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987 (40 U.S.C. 759 note) on the Secretary of Commerce or".

SEC. 5132. SENSE OF CONGRESS.

It is the sense of Congress that, during the next five-year period beginning with 1996, executive agencies should achieve each year at least a 5 percent decrease in the cost (in constant fiscal year 1996 dollars) that is incurred by the agency for operating and maintaining information technology, and each year a 5 percent increase in the efficiency of the agency operations, by reason of improvements in information resources management by the agency.

Subtitle E—National Security Systems

SEC. 5141. APPLICABILITY TO NATIONAL SECURITY SYSTEMS.

(a) IN GENERAL.—Except as provided in subsection (b), this title does not apply to national security systems.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Sections 5123, 5125, and 5126 apply to national security systems.

(2) CAPITAL PLANNING AND INVESTMENT CONTROL.—The heads of executive agencies shall apply sections 5112 and 5122 to national security systems to the extent practicable.

(3) PERFORMANCE AND RESULTS OF INFORMATION TECHNOLOGY INVESTMENTS.—(A) Subject to subparagraph (B), the heads of executive agencies shall apply section 5113 to national security systems to the extent practicable.

(B) National security systems shall be subject to section 5113(b)(5) except for subparagraph (B)(iv) of that section.

SEC. 5142. NATIONAL SECURITY SYSTEM DEFINED.

(a) DEFINITION.—In this subtitle, the term "national security system" means any telecommunications or information system oper-

ated by the United States Government, the function, operation, or use of which—

(1) involves intelligence activities;

(2) involves cryptologic activities related to national security;

(3) involves command and control of military forces;

(4) involves equipment that is an integral part of a weapon or weapons system; or

(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

(b) LIMITATION.—Subsection (a)(5) does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

TITLE LII—PROCESS FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

SEC. 5201. PROCUREMENT PROCEDURES.

The Federal Acquisition Regulatory Council shall ensure that, to the maximum extent practicable, the process for acquisition of information technology is a simplified, clear, and understandable process that specifically addresses the management of risk, incremental acquisitions, and the need to incorporate commercial information technology in a timely manner.

SEC. 5202. INCREMENTAL ACQUISITION OF INFORMATION TECHNOLOGY.

(a) POLICY.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

"SEC. 35. MODULAR CONTRACTING FOR INFORMATION TECHNOLOGY.

"(a) IN GENERAL.—The head of an executive agency should, to the maximum extent practicable, use modular contracting for an acquisition of a major system of information technology.

"(b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

"(c) IMPLEMENTATION.—The Federal Acquisition Regulation shall provide that—

"(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

"(A) are easier to manage individually than would be one comprehensive acquisition;

"(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attainment of those objectives;

"(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and

"(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occur during conduct of the earlier increments;

"(2) a contract for an increment of an information technology acquisition should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued and, if the contract for that increment cannot be awarded within such period, the increment should be considered for cancellation; and

"(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the date on which the solicitation resulting in award of the contract was issued.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 34 the following new item:

"Sec. 35. Modular contracting for information technology.".

TITLE LIII—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAMS

Subtitle A—Conduct of Pilot Programs

SEC. 5301. AUTHORITY TO CONDUCT PILOT PROGRAMS.

(a) IN GENERAL.—

(1) PURPOSE.—The Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), in consultation with the Administrator for the Office of Information and Regulatory Affairs, may conduct pilot programs in order to test alternative approaches for acquisition of information technology by executive agencies.

(2) MULTIAGENCY, MULTI-ACTIVITY CONDUCT OF EACH PROGRAM.—Except as otherwise provided in this title, each pilot program conducted under this title shall be carried out in not more than two procuring activities in each of the executive agencies that are designated by the Administrator in accordance with this title to carry out the pilot program. The head of each designated executive agency shall, with the approval of the Administrator, select the procuring activities of the executive agency that are to participate in the test and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of the pilot program within the executive agency.

(b) LIMITATIONS.—

(1) NUMBER.—Not more than two pilot programs may be conducted under the authority of this title, including one pilot program each pursuant to the requirements of sections 5311 and 5312.

(2) AMOUNT.—The total amount obligated for contracts entered into under the pilot programs conducted under the authority of this title may not exceed $750,000,000. The Administrator shall monitor such contracts and ensure that contracts are not entered into in violation of the limitation in the preceding sentence.

(c) PERIOD OF PROGRAMS.—

(1) IN GENERAL.—Subject to paragraph (2), any pilot program may be carried out under this title for the period, not in excess of five years, that is determined by the Administrator as being sufficient to establish reliable results.

(2) CONTINUING VALIDITY OF CONTRACTS.—A contract entered into under the pilot program before the expiration of that program shall remain in effect according to the terms of the contract after the expiration of the program.

SEC. 5302. EVALUATION CRITERIA AND PLANS.

(a) MEASURABLE TEST CRITERIA.—The head of each executive agency conducting a pilot program under section 5301 shall establish, to the maximum extent practicable, measurable criteria for evaluating the effects of the procedures or techniques to be tested under the program.

(b) TEST PLAN.—Before a pilot program may be conducted under section 5301, the Administrator shall submit to Congress a detailed test plan for the program, including a detailed description of the procedures to be used and a list of any regulations that are to be waived.

SEC. 5303. REPORT.

(a) REQUIREMENT.—Not later than 180 days after the completion of a pilot program under this title, the Administrator shall—

(1) submit to the Director a report on the results and findings under the program; and

(2) provide a copy of the report to Congress.

(b) CONTENT.—The report shall include the following:

(1) A detailed description of the results of the program, as measured by the criteria established for the program.

(2) A discussion of any legislation that the Administrator recommends, or changes in regulations that the Administrator considers necessary, in order to improve overall information resources management within the Federal Government.

SEC. 5304. RECOMMENDED LEGISLATION.

If the Director determines that the results and findings under a pilot program under this title indicate that legislation is necessary or desirable in order to improve the process for acquisition of information technology, the Director shall transmit the Director's recommendations for such legislation to Congress.

SEC. 5305. RULE OF CONSTRUCTION.

Nothing in this title shall be construed as authorizing the appropriation or obligation of funds for the pilot programs authorized under this title.

Subtitle B—Specific Pilot Programs

SEC. 5311. SHARE-IN-SAVINGS PILOT PROGRAM.

(a) REQUIREMENT.—The Administrator may authorize the heads of two executive agencies to carry out a pilot program to test the feasibility of—

(1) contracting on a competitive basis with a private sector source to provide the Federal Government with an information technology solution for improving mission-related or administrative processes of the Federal Government; and

(2) paying the private sector source an amount equal to a portion of the savings derived by the Federal Government from any improvements in mission-related processes and administrative processes that result from implementation of the solution.

(b) LIMITATIONS.—The head of an executive agency authorized to carry out the pilot program may, under the pilot program, carry out one project and enter into not more than five contracts for the project.

(c) SELECTION OF PROJECTS.—The projects shall be selected by the Administrator, in consultation with the Administrator for the Office of Information and Regulatory Affairs.

SEC. 5312. SOLUTIONS-BASED CONTRACTING PILOT PROGRAM.

(a) IN GENERAL.—The Administrator may authorize the heads of any of the executive agencies, in accordance with subsection (d)(2), to carry out a pilot program to test the feasibility of using solutions-based contracting for acquisition of information technology.

(b) SOLUTIONS-BASED CONTRACTING DESCRIBED.—For purposes of this section, solutions-based contracting is an acquisition method under which the acquisition objectives are defined by the Federal Government user of the technology to be acquired, a streamlined contractor selection process is used, and industry sources are allowed to provide solutions that attain the objectives effectively.

(c) PROCESS REQUIREMENTS.—The Administrator shall require use of a process with the following aspects for acquisitions under the pilot program:

(1) ACQUISITION PLAN EMPHASIZING DESIRED RESULT.—Preparation of an acquisition plan that defines the functional requirements of the intended users of the information technology to be acquired, identifies the operational improvements to be achieved, and defines the performance measurements to be applied in determining whether the information technology acquired satisfies the defined requirements and attains the identified results.

(2) RESULTS-ORIENTED STATEMENT OF WORK.—Use of a statement of work that is limited to an expression of the end results or performance capabilities desired under the acquisition plan.

(3) SMALL ACQUISITION ORGANIZATION.—Assembly of a small acquisition organization consisting of the following:

(A) An acquisition management team, the members of which are to be evaluated and rewarded under the pilot program for contributions toward attainment of the desired results identified in the acquisition plan.

(B) A small source selection team composed of representatives of the specific mission or administrative area to be supported by the information technology to be acquired, together with a contracting officer and persons with relevant expertise.

(4) USE OF SOURCE SELECTION FACTORS EMPHASIZING SOURCE QUALIFICATIONS AND COSTS.—Use of source selection factors that emphasize—

(A) the qualifications of the offeror, including such factors as personnel skills, previous experience in providing other private or public sector organizations with solutions for attaining objectives similar to the objectives of the acquisition, past contract performance, qualifications of the proposed program manager, and the proposed management plan; and

(B) the costs likely to be associated with the conceptual approach proposed by the offeror.

(5) OPEN COMMUNICATIONS WITH CONTRACTOR COMMUNITY.—Open availability of the following information to potential offerors:

(A) The agency mission to be served by the acquisition.

(B) The functional process to be performed by use of information technology.

(C) The process improvements to be attained.

(6) SIMPLE SOLICITATION.—Use of a simple solicitation that sets forth only the functional work description, the source selection factors to be used in accordance with paragraph (4), the required terms and conditions, instructions regarding submission of offers, and the estimate of the Federal Government's budget for the desired work.

(7) SIMPLE PROPOSALS.—Submission of oral presentations and written proposals that are limited in size and scope and contain information on—

(A) the offeror's qualifications to perform the desired work;

(B) past contract performance;

(C) the proposed conceptual approach; and

(D) the costs likely to be associated with the proposed conceptual approach.

(8) SIMPLE EVALUATION.—Use of a simplified evaluation process, to be completed within 45 days after receipt of proposals, which consists of the following:

(A) Identification of the most qualified offerors that are within the competitive range.

(B) Issuance of invitations for at least three and not more than five of the identified offerors to make oral presentations to, and engage in discussions with, the evaluating personnel regarding, for each offeror—

(i) the qualifications of the offeror, including how the qualifications of the offeror relate to the approach proposed to be taken by the offeror in the acquisition; and

(ii) the costs likely to be associated with the approach.

(C) Evaluation of the qualifications of the identified offerors and the costs likely to be associated with the offerors' proposals on the basis of submissions required under the process and any oral presentations made by, and any discussions with, the offerors.

(9) SELECTION OF MOST QUALIFIED OFFEROR.—A selection process consisting of the following:

(A) Identification of the most qualified source, and ranking of alternative sources, primarily on the basis of the oral proposals, presentations, and discussions, and written proposals submitted in accordance with paragraph (7).

(B) Conduct for 30 to 60 days of a program definition phase (funded, in the case of the source ultimately awarded the contract, by the Federal Government)—

(i) during which the selected source, in consultation with one or more intended users, develops a conceptual system design and technical approach, defines logical phases for the project, and estimates the total cost and the cost for each phase; and

(ii) after which a contract for performance of the work may be awarded to that source on the basis of cost, the responsiveness, reasonableness, and quality of the proposed performance, and a sharing of risk and benefits between the source and the Government.

(C) Conduct of as many successive program definition phases with alternative sources (in the order ranked) as is necessary in order to award a contract in accordance with subparagraph (B).

(10) SYSTEM IMPLEMENTATION PHASING.—System implementation to be executed in phases that are tailored to the solution, with various contract arrangements being used, as appropriate, for various phases and activities.

(11) MUTUAL AUTHORITY TO TERMINATE.—Authority for the Federal Government or the contractor to terminate the contract without penalty at the end of any phase defined for the project.

(12) TIME MANAGEMENT DISCIPLINE.—Application of a standard for awarding a contract within 105 to 120 days after issuance of the solicitation.

(d) PILOT PROGRAM DESIGN.—

(1) JOINT PUBLIC-PRIVATE WORKING GROUP.—The Administrator, in consultation with the Administrator for the Office of Information and Regulatory Affairs, shall establish a joint working group of Federal Government personnel and representatives of the information technology industry to design a plan for conduct of any pilot program carried out under this section.

(2) CONTENT OF PLAN.—The plan shall provide for use of solutions-based contracting in the Department of Defense and not more than two other executive agencies for a total of—

(A) not more than 10 projects, each of which has an estimated cost of between $25,000,000 and $100,000,000; and

(B) not more than 10 projects, each of which has an estimated cost of between $1,000,000 and $5,000,000, to be set aside for small business concerns.

(3) COMPLEXITY OF PROJECTS.—(A) Subject to subparagraph (C), each acquisition project under the pilot program shall be sufficiently complex to provide for meaningful evaluation of the use of solutions-based contracting for acquisition of information technology for executive agencies.

(B) In order for an acquisition project to satisfy the requirement in subparagraph (A), the solution for attainment of the executive agency's objectives under the project should not be obvious, but rather shall involve a need for some innovative development and systems integration.

(C) An acquisition project should not be so extensive or lengthy as to result in undue delay in the evaluation of the use of solutions-based contracting.

(e) MONITORING BY GAO.—The Comptroller General of the United States shall—

(1) monitor the conduct, and review the results, of acquisitions under the pilot program; and

(2) submit to Congress periodic reports containing the views of the Comptroller General on the activities, results, and findings under the pilot program.

TITLE LIV—ADDITIONAL INFORMATION RESOURCES MANAGEMENT MATTERS

SEC. 5401. ON-LINE MULTIPLE AWARD SCHEDULE CONTRACTING.

(a) AUTOMATION OF MULTIPLE AWARD SCHEDULE CONTRACTING.—In order to provide for the economic and efficient procurement of information technology and other commercial items, the Administrator of General Services shall provide through the Federal Acquisition Computer Network (in this section referred to as "FACNET"), not later than January 1, 1998, Government-wide on-line computer access to information on products and services that are available for ordering under the multiple award schedules. If the Administrator determines it is not practicable to provide such access through FACNET, the Administrator shall provide such access through another automated system that has the capability to perform the functions listed in subsection (b)(1) and meets the requirement of subsection (b)(2).

(b) ADDITIONAL FACNET FUNCTIONS.—(1) In addition to the functions specified in section 30(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 426(b)), the FACNET architecture shall have the capability to perform the following functions:

(A) Provide basic information on prices, features, and performance of all products and services available for ordering through the multiple award schedules.

(B) Provide for updating that information to reflect changes in prices, features, and performance as soon as information on the changes becomes available.

(C) Enable users to make on-line computer comparisons of the prices, features, and performance of similar products and services offered by various vendors.

(2) The FACNET architecture shall be used to place orders under the multiple award schedules in a fiscal year for an amount equal to at least 60 percent of the total amount spent for all orders under the multiple award schedules in that fiscal year.

(c) STREAMLINED PROCEDURES.—

(1) PILOT PROGRAM.—Upon certification by the Administrator of General Services that the FACNET architecture meets the requirements of subsection (b)(1) and was used as required by subsection (b)(2) in the fiscal year preceding the fiscal year in which the certification is made, the Administrator for Federal Procurement Policy may establish a pilot program to test streamlined procedures for the procurement of information technology products and services available for ordering through the multiple award schedules.

(2) APPLICABILITY TO MULTIPLE AWARD SCHEDULE CONTRACTS.—Except as provided in paragraph (4), the pilot program shall be applicable to all multiple award schedule contracts for the purchase of information technology and shall test the following procedures:

(A) A procedure under which negotiation of the terms and conditions for a covered multiple award schedule contract is limited to terms and conditions other than price.

(B) A procedure under which the vendor establishes the prices under a covered multiple award schedule contract and may adjust those prices at any time in the discretion of the vendor.

(C) A procedure under which a covered multiple award schedule contract is awarded to any responsible offeror that—

(i) has a suitable record of past performance, which may include past performance on multiple award schedule contracts;

(ii) agrees to terms and conditions that the Administrator determines as being required by law or as being appropriate for the purchase of commercial items; and

(iii) agrees to establish and update prices, features, and performance and to accept orders electronically through the automated system established pursuant to subsection (a).

(3) COMPTROLLER GENERAL REVIEW AND REPORT.—(A) Not later than three years after the date on which the pilot program is established, the Comptroller General of the United States shall review the pilot program and report to the Congress on the results of the pilot program.

(B) The report shall include the following:

(i) An evaluation of the extent to which there is competition for the orders placed under the pilot program.

(ii) The effect that the streamlined procedures under the pilot program have on prices charged under multiple award schedule contracts.

(iii) The effect that such procedures have on paperwork requirements for multiple award schedule contracts and orders.

(iv) The impact of the pilot program on small businesses and socially and economically disadvantaged small businesses.

(4) WITHDRAWAL OF SCHEDULE OR PORTION OF SCHEDULE FROM PILOT PROGRAM.—The Administrator may withdraw a multiple award schedule or portion of a schedule from the pilot program if the Administrator determines that (A) price competition is not available under such schedule or portion thereof, or (B) the cost to the Government for that schedule or portion thereof for the previous year was higher than it would have been if the contracts for such schedule or portion thereof had been awarded using procedures that would apply if the pilot program were not in effect. The Administrator shall notify Congress at least 30 days before the date on which the Administrator withdraws a schedule or portion thereof under this paragraph. The authority under this paragraph may not be delegated.

(5) TERMINATION OF PILOT PROGRAM.—Unless reauthorized by law, the authority of the Administrator to award contracts under the pilot program shall expire four years after the date on which the pilot program is established. Contracts entered into before the authority expires shall remain in effect in accordance with their terms notwithstanding the expiration of the authority to award new contracts under the pilot program.

(d) DEFINITION.—In this section, the term "FACNET" means the Federal Acquisition Computer Network established under section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426).

SEC. 5402. IDENTIFICATION OF EXCESS AND SURPLUS COMPUTER EQUIPMENT.

Not later than six months after the date of the enactment of this Act, the head of an executive agency shall inventory all computer equipment under the control of that official. After completion of the inventory, the head of the executive agency shall maintain, in accordance with title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.), an inventory of any such equipment that is excess or surplus property.

SEC. 5403. ACCESS OF CERTAIN INFORMATION IN INFORMATION SYSTEMS TO THE DIRECTORY ESTABLISHED UNDER SECTION 4101 OF TITLE 44, UNITED STATES CODE.

Notwithstanding any other provision of this division, if in designing an information technology system pursuant to this division, the head of an executive agency determines that a purpose of the system is to disseminate information to the public, then the head of such executive agency shall reasonably ensure that an index of information disseminated by such system is included in the directory created pursuant to section 4101 of title 44, United States Code. Nothing in this section authorizes the dissemination of information to the public unless otherwise authorized.

TITLE LV—PROCUREMENT PROTEST AUTHORITY OF THE COMPTROLLER GENERAL

SEC. 5501. PERIOD FOR PROCESSING PROTESTS.

Title 31, United States Code, is amended as follows:

(1) Section 3553(b)(2)(A) is amended by striking out "35" and inserting in lieu thereof "30".

(2) Section 3554 is amended—

(A) in subsection (a)(1), by striking out "125" and inserting in lieu thereof "100"; and

(B) in subsection (e)—

(i) in paragraph (1), by striking out "Government Operations" and inserting in lieu thereof "Government Reform and Oversight"; and

(ii) in paragraph (2), by striking out "125" and inserting in lieu thereof "100".

SEC. 5502. AVAILABILITY OF FUNDS FOLLOWING GAO RESOLUTION OF CHALLENGE TO CONTRACTING ACTION.

(a) IN GENERAL.—Section 1558 of title 31, United States Code, is amended—

(1) in the first sentence of subsection (a)—

(A) by inserting "or other action referred to in subsection (b)" after "protest" the first place it appears;

(B) by striking out "90 working days" and inserting in lieu thereof "100 days"; and

(C) by inserting "or other action" after "protest" the second place it appears; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) Subsection (a) applies with respect to—

"(1) any protest filed under subchapter V of chapter 35 of this title; or

"(2) an action commenced under administrative procedures or for a judicial remedy if—

"(A) the action involves a challenge to—

"(i) a solicitation for a contract;

"(ii) a proposed award of a contract;

"(iii) an award of a contract; or

"(iv) the eligibility of an offeror or potential offeror for a contract or of the contractor awarded the contract; and

"(B) commencement of the action delays or prevents an executive agency from making an award of a contract or proceeding with a procurement.".

(b) CONFORMING AMENDMENT.—The heading of such section is amended to read as follows:

"§ 1558. Availability of funds following resolution of a formal protest or other challenge".

(c) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 15 of title 31, United States Code, is amended to read as follows:

"1558. Availability of funds following resolution of a formal protest or other challenge.".

TITLE LVI—CONFORMING AND CLERICAL AMENDMENTS

SEC. 5601. AMENDMENTS TO TITLE 10, UNITED STATES CODE.

(a) PROTEST FILE.—Section 2305(e) is amended by striking out paragraph (3).

(b) MULTIYEAR CONTRACTS.—Section 2306b of such title is amended—

(1) by striking out subsection (k); and

(2) by redesignating subsection (l) as subsection (k).

(c) LAW INAPPLICABLE TO PROCUREMENT OF INFORMATION TECHNOLOGY.—Section 2315 of title 10, United States Code, is amended by striking out "Section 111" and all that follows through "use of equipment or services if," and inserting in lieu thereof the following: "For the purposes of the Information Technology Management Reform Act of 1996, the term 'national security systems' means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which".

SEC. 5602. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) REFERENCES TO BROOKS AUTOMATIC DATA PROCESSING ACT.—Section 612 of title 28, United States Code, is amended—

(1) in subsection (f), by striking out "section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)" and inserting in lieu thereof "the provisions of law, policies, and regulations applicable to executive agencies under the Information Technology Management Reform Act of 1996";

(2) in subsection (g), by striking out "sections 111 and 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 and 759)" and inserting in lieu thereof "section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481)";

(3) by striking out subsection (l); and

(4) by redesignating subsection (m) as subsection (l).

(b) REFERENCES TO AUTOMATIC DATA PROCESSING.—Section 612 of title 28, United States Code, is further amended—

(1) in the heading, by striking out the second word and inserting in lieu thereof "**Information Technology**";

(2) in subsection (a), by striking out "Judiciary Automation Fund" and inserting in lieu thereof "Judiciary Information Technology Fund"; and

(3) by striking out "automatic data processing" and inserting in lieu thereof "information technology" each place it appears in subsections (a), (b), (c)(2), (e), (f), and (h)(1).

SEC. 5603. AMENDMENT TO TITLE 31, UNITED STATES CODE.

Section 3552 of title 31, United States Code, is amended by striking out the second sentence.

SEC. 5604. AMENDMENTS TO TITLE 38, UNITED STATES CODE.

Section 310 of title 38, United States Code, is amended to read as follows:

"§ 310. Chief Information Officer

"(a) The Chief Information Officer for the Department is designated pursuant to section 3506(a)(2) of title 44.

"(b) The Chief Information Officer performs the duties provided for chief information officers of executive agencies under chapter 35 of title 44 and the Information Technology Management Reform Act of 1996.".

SEC. 5605. PROVISIONS OF TITLE 44, UNITED STATES CODE, RELATING TO PAPERWORK REDUCTION.

(a) DEFINITION.—Section 3502 of title 44, United States Code, is amended by striking out paragraph (9) and inserting in lieu thereof the following:

"(9) the term 'information technology' has the meaning given that term in section 5002 of the Information Technology Management Reform Act of 1996 but does not include national security systems as defined in section 5142 of that Act;".

(b) DEVELOPMENT OF STANDARDS AND GUIDELINES BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Section 3504(h)(1)(B) of such title is amended by striking out "section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d))" and inserting in lieu thereof "section 5131 of the Information Technology Management Reform Act of 1996".

(c) COMPLIANCE WITH DIRECTIVES.—Section 3504(h)(2) of such title is amended by striking out "sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759)" and inserting in lieu thereof "the Information Technology Management Reform Act of 1996 and directives issued under section 110 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757)".

(d) COLLECTION OF INFORMATION.—Section 3507(j)(2) of such title is amended by striking out "90 days" in the second sentence and inserting in lieu thereof "180 days".

SEC. 5606. AMENDMENT TO TITLE 49, UNITED STATES CODE.

Section 40112(a) of title 49, United States Code, is amended by striking out "or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies".

SEC. 5607. OTHER LAWS.

(a) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACT.—Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) is amended—

(1) in subsection (a)—

(A) by striking out "section 3502(2) of title 44" each place it appears in paragraphs (2) and (3)(A) and inserting in lieu thereof "section 3502(9) of title 44"; and

(B) in paragraph (4), by striking out "section 111(d) of the Federal Property and Administrative Services Act of 1949" and inserting in lieu thereof "section 5131 of the Information Technology Management Reform Act of 1996";

(2) in subsection (b)—

(A) by striking out paragraph (2);

(B) in paragraph (3), by striking out "section 111(d) of the Federal Property and Administrative Services Act of 1949" and inserting in lieu thereof "section 5131 of the Information Technology Management Reform Act of 1996"; and

(C) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5); and

(3) in subsection (d)—

(A) in paragraph (1)(B)(v), by striking out "as defined" and all that follows and inserting in lieu thereof a semicolon; and

(B) in paragraph (2)—

(i) by striking out "system'—" and all that follows through "means" in subparagraph (A) and inserting in lieu thereof "system' means"; and

(ii) by striking out "; and" at the end of subparagraph (A) and all that follows through the end of subparagraph (B) and inserting in lieu thereof a semicolon.

(b) COMPUTER SECURITY ACT OF 1987.—

(1) PURPOSES.—Section 2(b)(2) of the Computer Security Act of 1987 (Public Law 100–235; 101 Stat. 1724) is amended by striking out "by amending section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d))".

(2) SECURITY PLAN.—Section 6(b) of such Act (101 Stat. 1729; 40 U.S.C. 759 note) is amended—

(A) by striking out "Within one year after the date of enactment of this Act, each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949," and inserting in lieu thereof "Each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 5131 of the Information Technology Management Reform Act of 1996,"; and

(B) by striking out "Copies" and all that follows through "Code.".

(c) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—Section 303B(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(h)) is amended by striking out paragraph (3).

(d) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Section 6(h)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(h)(1)) is amended by striking out "of automatic data processing and telecommunications equipment and services or".

(e) NATIONAL ENERGY CONSERVATION POLICY ACT.—Section 801(b)(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287(b)(3)) is amended by striking out the second sentence.

(f) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—Section 3 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c) is amended by striking out subsection (e).

SEC. 5608. CLERICAL AMENDMENTS.

(a) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—The table of contents in section 1(b) of the Federal Property and Administrative Services Act of 1949 is amended by striking out the item relating to section 111.

(b) TITLE 38, UNITED STATES CODE.—The table of sections at the beginning of chapter 3 of title 38, United States Code, is amended by striking out the item relating to section 310 and inserting in lieu thereof the following:

"310. Chief Information Officer.".

TITLE LVII—EFFECTIVE DATE, SAVINGS PROVISIONS, AND RULES OF CONSTRUCTION

SEC. 5701. EFFECTIVE DATE.

This division and the amendments made by this division shall take effect 180 days after the date of the enactment of this Act.

SEC. 5702. SAVINGS PROVISIONS.

(a) REGULATIONS, INSTRUMENTS, RIGHTS, AND PRIVILEGES.—All rules, regulations, contracts, orders, determinations, permits, certificates, licenses, grants, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the Administrator of General Services or the General Services Board of Contract Appeals, or by a court of competent jurisdiction, in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), and

(2) which are in effect on the effective date of this division, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS.—

(1) PROCEEDINGS GENERALLY.—This division and the amendments made by this division shall not affect any proceeding, including any proceeding involving a claim, application, or protest in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) that is pending before the Administrator of General Services or the General Services Board of Contract Appeals on the effective date of this division.

(2) ORDERS.—Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if this division had not been en-

acted. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION OF PROCEEDINGS NOT PROHIBITED.—Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(4) OTHER AUTHORITY AND PROHIBITION.—Section 1558(a) of title 31, United States Code, and the second sentence of section 3552 of such title shall continue to apply with respect to a protest process in accordance with this subsection.

(5) REGULATIONS FOR TRANSFER OF PROCEEDINGS.—The Director may prescribe regulations providing for the orderly transfer of proceedings continued under paragraph (1).

(c) STANDARDS AND GUIDELINES FOR FEDERAL COMPUTER SYSTEMS.—Standards and guidelines that are in effect for Federal computer systems under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) on the day before the effective date of this division shall remain in effect until modified, terminated, superseded, revoked, or disapproved under the authority of section 5131 of this Act.

SEC. 5703. RULES OF CONSTRUCTION.

(a) RELATIONSHIP TO TITLE 44, UNITED STATES CODE.—Nothing in this division shall be construed to amend, modify, or supersede any provision of title 44, United States Code, other than chapter 35 of such title.

(b) RELATIONSHIP TO COMPUTER SECURITY ACT OF 1987.—Nothing in this division shall affect the limitations on authority that is provided for in the administration of the Computer Security Act of 1987 (Public Law 100–235) and the amendments made by such Act.