

eliminating the language that suspends the payment of a divorced spouse annuity when the employee although he or she is age-eligible, chooses not to receive an annuity.

I would urge my colleagues to support this vital piece of legislation.

Thank you.

THE FEDERAL ACQUISITION  
REFORM ACT OF 1995

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 24, 1995

Mr. CLINGER. Mr. Speaker, today I am introducing legislation, on behalf of myself, and National Security Committee Chairman Floyd Spence and International Relations Committee Chairman Benjamin Gilman, to simplify and streamline the Federal procurement process. This legislation will complement the work we started last year with the enactment of the Federal Acquisition Streamlining Act of 1994 [FASA].

There is no doubt that the almost \$200 billion spent each year by the Federal Government has been done in an inefficient and Byzantine way. The current system has cost too much, has involved too much red tape, and has ill-served both the taxpayer and industry. FASA was a direct attack on a procurement system that had gone haywire—it applied some common sense approaches to the bureaucracy to reduce the inefficiencies of the system, get some real cost savings for the taxpayer by encouraging competition, and reduce the burdens on both Government contracting officials and those who sell to them.

Reforming the Federal procurement system is an extremely difficult and complex task because the procurement process is itself arcanelly difficult and complex. Nevertheless, it is an issue of prime importance to both American business and the American taxpayer.

This bill we are introducing today will serve as the foundation for procurement reforms beyond those provided in FASA. The bill includes two issues which we were unable to resolve to our satisfaction during the development of FASA.

First, the bill would repeal current provisions of law known as "Procurement Integrity" and replace these provisions with simple prohibitions and clearer administrative standards. This proposal was developed originally by the Bush administration in 1989 and is supported by the Clinton administration.

The proposal more squarely addresses the same basic concern as current law: the unauthorized disclosure and receipt of procurement-sensitive information. But it does so by focusing on the information to be protected, not—as in current law—on the status of persons who might disclose or obtain the information or the particular stage of a procurement when sensitive information may be created.

The complexity of the current restrictions have frustrated the ability of the contracting workforce—both in Government and industry—to abide by them. Also, while our bill contains remedies similar to those available under the current law, it does not rely on the complex system of certifications demanded by current law to ensure compliance. We believe that statutory certification requirements are unlikely to deter conduct to be proscribed. More-

over, the certifications create considerable administrative burden that the system can no longer afford.

Our legislation also would remove remaining agency-specific post-employment restrictions. These provisions were made unnecessary when Congress passed the Ethics Reform Act of 1989 which included government-wide conflict of interest laws. The accumulation over time of several layers of tailored post-employment restrictions has complicated efforts to provide guidance and advice to those who must abide by the rules, and has frustrated Federal agencies in attracting the highest quality talent from industry and academia.

Second, our bill repeals a current provision of law which disadvantages U.S. companies when selling American products in international markets. Current law requires that a fee be paid to the U.S. Government on foreign sales of products and technologies developed under Government contracts. It may have been an appropriate policy when it was originally adopted in the early 1960's as a way of sharing development costs with U.S. allies. But today, our allies are our competition, and this current policy threatens the future of American workers by making it more difficult for their employers to compete for business in the world marketplace. The Bush administration recommended repeal of this provision, and the Clinton administration currently is recommending its repeal.

Beyond these reforms, we will be calling on the administration, industry and other interested parties to provide additional proposals which will assist us in developing the remainder of our legislative package. Although we do not intend a new procurement reform effort to be as comprehensive as FASA, we must continue to push for reforms which will make the Federal procurement system work better and cost less.

H.R. —

*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 "Federal Acquisition Reform Act of 1995".

**SEC. 2. PROCUREMENT INTEGRITY AMENDMENT.**

(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 and willfully 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 officer or employee 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 and willfully obtain contractor bid or pro-

posal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

"(c) PROHIBITION ON DISCLOSING OR OBTAINING PROCUREMENT INFORMATION IN CONNECTION WITH A PROTEST.—(1) A person shall not, other than as provided by law, knowingly and willfully violate the terms of a protective order described in paragraph (2) by disclosing or obtaining contractor bid or proposal information or source selection information related to the procurement contract concerned.

"(2) Paragraph (1) applies to any protective order issued by the Comptroller General or the board of contract appeals of the General Services Administration in connection with a protest against the award or proposed award of a Federal agency procurement contract.

"(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

"(1) CRIMINAL PENALTIES.—

"(A) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) shall be imprisoned for not more than one year or fined as provided under title 18, United States Code, or both.

"(B) Whoever engages in conduct constituting an offense under subsection (a), (b), or (c) for the purpose of either—

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

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

shall be imprisoned for not more than five 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 the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), or (c). 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 an offense under subsection (a), (b), or (c), 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 under subsection (a), (b), or (c), or

"(II) the head of the agency that awarded the contract has determined, based upon clear and convincing 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 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), or (c) affects the present responsibility of a Government contractor or subcontractor.

“(e) 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(i) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(i) of Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(i), 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 section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) or subchapter V of chapter 35 of title 31, United States Code.

“(f) LIMITATION ON PROTESTS.—No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging an offense under subsection (a), (b), or (c), of this section, nor may the Comptroller General or the board of contract appeals of the General Services Administration consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement information that the person believed constituted evidence of the offense no later than 14 days after the person first discovered the possible offense.

“(g) 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) 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;

“(5) authorize the withholding of information from, nor restrict its receipt by, any board of contract appeals of a Federal agency or the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

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

(b) REGULATIONS.—(1) Proposed revisions to the Federal Acquisition Regulation to implement this section shall be published in the Federal Register not later than 60 days after the date of the enactment of this Act.

(2) The proposed regulations described in paragraph (1) shall be made available for public comment for a period of not less than 60 days.

(3) Final regulations shall be published in the Federal Register not later than 150 days after the date of the enactment of this Act.

(c) REPEALS.—(1) The following provisions of law are repealed:

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

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

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

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

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

(C) 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.

### SEC. 3. INTERNATIONAL COMPETITIVENESS.

(a) REPEAL OF PROVISION RELATING TO RESEARCH, DEVELOPMENT, AND PRODUCTION COSTS.—Section 21(e) of the Arms Export Control Act (22 U.S.C. 2761(e)) is amended—

(1) by inserting “and” after the semicolon at the end of paragraph (1)(A);

(2) by striking out subparagraph (B) of paragraph (1);

(3) by redesignating subparagraph (C) of paragraph (1) as subparagraph (B);

(4) by striking out paragraph (2); and

(5) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to sales agreements pursuant to sections 21 and 22 of the Arms Export Control Act (22 U.S.C. 2761 and 2762) entered into on or after the date of the enactment of this Act.

## IN SUPPORT OF FEDERAL FUNDING FOR THE ARTS AND PUBLIC BROADCASTING

### HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 24, 1995

Mr. VENTO. Mr. Speaker, as we consider Federal support of the arts and public broadcasting, we must recognize the full cultural and economic benefits of these activities. The nonprofit arts industry is an important part of the economy, constituting nearly 1 percent of the entire U.S. work force and contributing \$36.8 billion to the national economy. In addition, Federal funding enhances the ability of specialized artists and musicians to keep unique cultural traditions alive for future generations. I would like to bring to the attention of my colleagues the following letter and editorial from the Minneapolis Star Tribune which provide further evidence of the positive effect of Federal funding for these programs.

[From the Minneapolis Star Tribune, Feb. 22, 1995]

#### THE ARTS—A PRAGMATIC CASE ONLY GOES SO FAR

As political rhetoric against the evils of federal arts funding heats up, arts organizations are working hard to offer compelling counter arguments—as well they'd better. But something important about the nature of the arts is getting missed.

If you've been listening to House Republicans lately, you've heard the arts portrayed as, variously, the playground of the elite, the domain of leftist counterculturalists, the path to immorality and decadence. Recipient artists are seen as entrepreneurs on the dole—laggards who should, instead, submit themselves to the verdict of the marketplace. Each argument must be countered, and thoughtful folks are compiling facts and figures to do just that.

And yet the resulting defense, designed to persuade those who aren't attuned to the arts, falls short of expressing the value of the arts—and why Americans should make sure they flourish. Job statistics, investment payoffs, community growth potential—they're all meaningful, they're all true. They're even persuasive:

The nonprofit arts industry contributes \$36.8 billion to the national economy each year.