

RIVERS, Mr. ROEMER, Mr. ROMERO-BARCELO, Mr. ROSE, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SABO, Mr. SANDERS, Mr. SAWYER, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SCOTT, Mr. SERRANO, Mr. SKAGGS, Mr. SKELTON, Ms. SLAUGHTER, Mr. SPRATT, Mr. STENHOLM, Mr. STOKES, Mr. STUDDS, Mr. STUPAK, Mr. TANNER, Mr. TAYLOR of Mississippi, Mr. TEJEDA, Mr. THOMPSON, Mr. THORNTON, Mrs. THURMAN, Mr. TORRES, Mr. TORRICELLI, Mr. TOWNS, Mr. TRAFICANT, Mr. TUCKER, Mr. UNDERWOOD, Ms. VELAZQUEZ, Mr. VENTO, Mr. VISCLOSKEY, Mr. VOLKMER, Mr. WARD, Ms. WATERS, Mr. WATT of North Carolina, Mr. WILLIAMS, Mr. WILSON, Mr. WISE, Ms. WOOLSEY, Mr. WYDEN, Mr. WYNN, and Mr. YATES):

H. Res. 221. Resolution providing that consideration in the House of Representatives and its committees and subcommittees thereof of any legislation changing existing law with respect to Medicare or Medicaid pursuant to the reconciliation instructions of the concurrent resolution on the budget for fiscal year 1996 shall be preceded by adequate time for public examination of such legislation and public hearings thereon, and expressing the sense of the House that the Senate should similarly provide for such public examination and hearings; to the Committee on Rules.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 65: Mr. FOX.
 H.R. 103: Mr. WARD and Mr. SCARBOROUGH.
 H.R. 104: Mr. BEREUTER.
 H.R. 109: Mr. DELLUMS.
 H.R. 127: Mr. DAVIS, Mr. SPRATT, Mr. JOHNSTON of Florida, Mr. MANTON, Mr. FUNDERBURK, Mr. DOOLITTLE, Mr. LIGHTFOOT, Mr. DEUTSCH, Mr. HEFLEY, Ms. NORTON, Ms. DELAURO, Miss COLLINS of Michigan, Mr. HEFNER, Mr. YATES, Mr. VISCLOSKEY, Mr. LAHOOD, Mr. MENENDEZ, and Ms. ESHOO.
 H.R. 218: Mr. COX, Mr. DORNAN, Mr. HALL of Ohio, and Mr. POSHARD.
 H.R. 248: Mrs. MORELLA and Mr. HAMILTON.
 H.R. 249: Mr. FOX.
 H.R. 351: Mr. ROTH.
 H.R. 390: Mr. MCINTOSH.
 H.R. 468: Mr. SAXTON and Mr. CRAMER.
 H.R. 528: Mr. DICKEY, Mr. MONTGOMERY, and Mr. CALLAHAN.
 H.R. 580: Mr. COBURN.
 H.R. 743: Mr. PAXON, Mr. DICKEY, Mr. CALLAHAN, Mr. BLILEY, and Mr. HILLEARY.
 H.R. 789: Mr. HILLIARD, Mr. MORAN, and Mr. McNULTY.
 H.R. 820: Mr. PAXON and Mr. DREIER.
 H.R. 833: Mr. WYDEN.
 H.R. 911: Mrs. MALONEY.
 H.R. 922: Mr. GANSKE.
 H.R. 969: Mr. DURBIN.
 H.R. 1023: Mr. MATSUI.
 H.R. 1114: Mr. TANNER and Mr. BASS.
 H.R. 1127: Mr. BEREUTER and Mr. SANDERS.
 H.R. 1279: Mr. COBLE, Mr. ARCHER, Mr. MCCOLLUM, and Mr. CALVERT.
 H.R. 1386: Mr. HANSEN, Mr. BARTON of Texas, Mr. TORKILDSEN, Mr. SALMON, Mr. PETRI, Mr. COBURN, and Mr. HAYES.
 H.R. 1406: Mr. KINGSTON.
 H.R. 1458: Mr. CRAMER.
 H.R. 1484: Mrs. MEEK of Florida, Mr. VISCLOSKEY, Mr. KLECZKA, and Mr. FROST.
 H.R. 1488: Mr. HANCOCK, Mr. RAHALL, Mr. PETERSON of Minnesota, Mr. BAKER of Louisiana, Mr. CHAMBLISS, Mr. MURTHA, Mr. FRANKS of Connecticut, Mr. KINGSTON, Mr. TIAHRT, and Mr. SHUSTER.

H.R. 1618: Mr. ZIMMER, Mr. WATTS of Oklahoma, and Mr. CANADY.

H.R. 1687: Mr. STOCKMAN, Mr. NEAL of Massachusetts, and Mr. HOSTETTLER.

H.R. 1713: Mr. DICKEY.

H.R. 1758: Mr. MARKEY.

H.R. 1774: Mrs. MALONEY.

H.R. 1818: Mr. FOLEY, Mr. BONO, Mrs. MEYERS of Kansas, Mr. LEWIS of Kentucky, and Mr. HASTINGS of Washington.

H.R. 1872: Mr. PAYNE of New Jersey.

H.R. 1918: Mr. CUNNINGHAM, Mr. BILBRAY, Mr. KLUG, and Mr. MCCOLLUM.

H.R. 1960: Mr. ANDREWS.

H.R. 2011: Mr. SERRANO, Mr. SANDERS, Mr. FORD, Mr. MANTON, Mr. MATSUI, Mr. DELLUMS, Mr. COLEMAN, Mr. KENNEDY of Rhode Island, Mr. JOHNSTON of Florida, Mrs. THURMAN, and Mr. GEJDENSON.

H.R. 2072: Mr. ROYCE, Mr. SANFORD, Mr. SCARBOROUGH, Mr. FORBES, Mr. DAVIS, and Mr. HORN.

H.R. 2090: Mr. MEEHAN, Mrs. MEYERS of Kansas, and Mr. HOKE.

H.R. 2105: Mr. OBERSTAR, Mr. BROWN of Ohio, Mr. FORBES, Mr. LOBIONDO, Mr. BARCIA of Michigan, and Mr. GEJDENSON.

H.R. 2190: Mr. DUNCAN, Mr. DEUTSCH, Mr. GILCHREST, Mr. FIELDS of Texas, and Mr. FOLEY.

H.R. 2200: Mr. FIELDS of Texas, Mr. ROHRBACHER, Mr. CAMP, and Mr. STUPAK.

H.R. 2202: Mr. BUYER and Mr. CRAMER.

H.R. 2271: Ms. KAPTUR.

H. Con. Res. 21: Mr. MEEHAN.

H. Con. Res. 50: Mr. FRANKS of Connecticut.

H. Con. Res. 80: Mr. OLVER, Mr. LEVIN, Mr. FROST, Mr. MEEHAN, Mr. FRANK of Massachusetts, Mr. LUTHER, and Mr. SABO.

H. Res. 200: Ms. ROYBAL-ALLARD.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 359: Mr. STUDDS and Mr. FOX.
 H.R. 534: Mr. INGLIS of South Carolina.
 H.R. 899: Ms. EDDIE BERNICE JOHNSON of Texas.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1670

OFFERED BY: Mr. SPENCE

AMENDMENT NO. 6: (1) Strike out title IV (page 100, starting on line 13, and all that follows through line 18 on page 143) and insert in lieu thereof the following:

TITLE IV—STREAMLINING OF DISPUTE RESOLUTION

Subtitle A—General Provisions

SEC. 401. DEFINITIONS.

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

“TITLE II—DISPUTE RESOLUTION

“Subtitle A—General Provisions

“SEC. 201. DEFINITIONS.

“In this title:

“(1) The term ‘Defense Board’ means the Department of Defense Board of Contract Appeals established pursuant to section 8(a) of the Contract Disputes Act of 1978 (41 U.S.C. 607).

“(2) The term ‘Civilian Board’ means the Civilian Board of Contract Appeals established pursuant to section 8(b) of the Contract Disputes Act of 1978 (41 U.S.C. 607).

“(3) The term ‘Board judge’ means a member of the Defense Board or the Civilian Board, as the case may be.

“(4) The term ‘Chairman’ means the Chairman of the Defense Board or the Civilian Board, as the case may be.

“(5) The term ‘Board concerned’ means—
 “(A) the Defense Board with respect to matters within its jurisdiction; and
 “(B) the Civilian Board with respect to matters within its jurisdiction.

“(6) The term ‘executive agency’—
 “(A) with respect to contract disputes and protests under the jurisdiction of the Defense Board, means the Department of Defense, the Department of the Army, the Department of the Navy, or the Department of the Air Force; and
 “(B) with respect to contract disputes and protests under the jurisdiction of the Civilian Board, has the meaning given by section 4(1) of this Act except that the term does not include the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

“(7) The term ‘alternative means of dispute resolution’ has the meaning given by section 571(3) of title 5, United States Code.
 “(8) The term ‘protest’ means a written objection by an interested party to any of the following:
 “(A) A solicitation or other request by an executive agency for offers for a contract for the procurement of property or services.
 “(B) The cancellation of such a solicitation or other request.
 “(C) An award or proposed award of such a contract.
 “(9) The term ‘interested party’, with respect to a contract or a solicitation or other request for offers, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

“(10) The term ‘prevailing party’, with respect to a determination of the Board under section 214(h)(2) that a decision of the head of an executive agency is arbitrary or capricious or violates a statute or regulation, means a party that showed that the decision was arbitrary or capricious or violated a statute or regulation.”.

(b) CONFORMING AMENDMENTS.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is further amended—

(1) by inserting the following before section 1:

“TITLE I—FEDERAL PROCUREMENT POLICY GENERALLY”;

and

(2) in section 4, by striking out “As used in this Act:” and inserting in lieu thereof “Except as otherwise specifically provided, as used in this Act:”.

Subtitle B—Establishment of Civilian and Defense Boards of Contract Appeals

SEC. 411. ESTABLISHMENT.

Subsections (a) and (b) of section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) are amended to read as follows:

“(a) There is established in the Department of Defense a board of contract appeals to be known as the Department of Defense Board of Contract Appeals.

“(b) There is established in the General Services Administration a board of contract appeals to be known as the Civilian Board of Contract Appeals.”.

SEC. 412. MEMBERSHIP.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 401, is further amended by adding at the end the following:

SEC. 202. MEMBERSHIP.

“(a) APPOINTMENT.—(1)(A) The Defense Board shall consist of judges appointed by the Secretary of Defense from a register of applicants maintained by the Defense Board, in accordance with rules issued by the Defense Board for establishing and maintaining a register of eligible applicants and selecting Defense Board judges. The Secretary shall appoint a judge without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Defense Board judge.

“(B) The Civilian Board shall consist of judges appointed by the Administrator of General Services from a register of applicants maintained by the Civilian Board, in accordance with rules issued by the Civilian Board for establishing and maintaining a register of eligible applicants and selecting Civilian Board judges. The Administrator shall appoint a judge without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Civilian Board judge.

“(2) The members of the Defense Board and the Civilian Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, United States Code, with an additional requirement that such members shall have had not fewer than five years of experience in public contract law.

“(3) Notwithstanding paragraph (2) and subject to subsection (b), the following persons shall serve as Board judges:

“(A) For the Defense Board, any full-time member of the Armed Services Board of Contract Appeals serving as such on the day before the effective date of this title.

“(B) For the Civilian Board, any full-time member of any agency board of contract appeals other than the Armed Services Board of Contract Appeals serving as such on the day before the effective date of this title.

“(C) For either the Defense Board or the Civilian Board, any person serving on the day before the effective date of this title in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code.

“(b) REMOVAL.—Members of the Defense Board and the Civilian Board shall be subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5, United States Code.

“(c) COMPENSATION.—Compensation for the Chairman of the Defense Board and the Chairman of the Civilian Board and all other members of each Board shall be determined under section 5372a of title 5, United States Code.”

SEC. 413. CHAIRMAN.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 412, is further amended by adding at the end the following:

“SEC. 203. CHAIRMAN.

“(a) DESIGNATION.—(1)(A) The Chairman of the Defense Board shall be designated by the Secretary of Defense to serve for a term of five years. The Secretary shall select the Chairman from among sitting judges each of whom has had at least five years of service—

“(i) as a member of the Armed Services Board of Contract Appeals; or

“(ii) in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date of this title).

“(B) The Chairman of the Civilian Board shall be designated by the Administrator of General Services to serve for a term of five years. The Administrator shall select the Chairman from among sitting judges each of whom has had at least five years of service—

“(i) as a member of an agency board of contract appeals other than the Armed Services Board of Contract Appeals; or

“(ii) in a position at a level of assistant general counsel or higher with authority delegated from the Comptroller General to decide bid protests under subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date of this title).

“(2) A Chairman of a Board may continue to serve after the expiration of the Chairman's term until a successor has taken office. A Chairman may be reappointed any number of times.

“(b) RESPONSIBILITIES.—The Chairman of the Defense Board or the Civilian Board, as the case may be, shall be responsible on behalf of the Board for the executive and administrative operation of the Board, including functions of the Board with respect to the following:

“(1) The selection, appointment, and fixing of the compensation of such personnel, pursuant to part III of title 5, United States Code, as the Chairman considers necessary or appropriate, including a Clerk of the Board, a General Counsel, and clerical and legal assistance for Board judges.

“(2) The supervision of personnel employed by or assigned to the Board, and the distribution of work among such personnel.

“(3) The operation of an Office of the Clerk of the Board, including the receipt of all filings made with the Board, the assignment of cases, and the maintenance of all records of the Board.

“(4) The prescription of such rules and regulations as the Chairman considers necessary or appropriate for the administration and management of the Board.

“(c) VICE CHAIRMEN.—The Chairman of the Defense Board or the Civilian Board, as the case may be, may designate up to four other Board judges as Vice Chairmen. The Chairman may divide the Board into two divisions, one for handling contract disputes and one for handling protests, and, if such division is made, shall assign a Vice Chairman to head each division. The Vice Chairmen, in the order designated by the Chairman, shall act in the place and stead of the Chairman during the absence of the Chairman.”

SEC. 414. RULEMAKING AUTHORITY.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 413, is further amended by adding at the end the following:

“SEC. 204. RULEMAKING AUTHORITY.

“(a) IN GENERAL.—Except as provided by section 452 of the Federal Acquisition Reform Act of 1995, the Chairman of the Defense Board and the Chairman of the Civilian Board shall jointly issue and maintain—

“(1) such procedural rules and regulations as are necessary to the exercise of the functions of the Boards under sections 213 and 214; and

“(2) statements of policy of general applicability with respect to such functions.

“(b) BOARD PROCEDURES.—In issuing procedural rules and regulations for the exercise of the Boards' protest function under section 214, the Chairmen shall take due notice of executive agency procedures for the resolution of protests as a discretionary alternative to resolution of protests by the Boards and shall ensure that the rules and regulations governing the time for filing protests with the Boards make appropriate allowance for the use of such executive agency procedures by interested parties.”

SEC. 415. AUTHORIZATION OF APPROPRIATIONS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 414, is further amended by adding at the end the following:

“SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated for fiscal year 1997 and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this title. Funds for the activities of each Board shall be separately appropriated for such purpose. Funds appropriate pursuant to this section shall remain available until expended.”

Subtitle C—Functions of Defense and Civilian Boards of Contract Appeals

SEC. 421. ALTERNATIVE DISPUTE RESOLUTION SERVICES.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 415, is further amended by adding at the end the following:

“Subtitle B—Functions of the Defense and Civilian Boards of Contract Appeals

“SEC. 211. ALTERNATIVE DISPUTE RESOLUTION SERVICES.

“(a) REQUIREMENT TO PROVIDE SERVICES UPON REQUEST.—The Defense Board and the Civilian Board shall each provide alternative means of dispute resolution for any disagreement regarding a contract or prospective contract of an executive agency upon the request of all parties to the disagreement.

“(b) PERSONNEL QUALIFIED TO ACT.—Each Board judge and each attorney employed by the Board concerned shall be considered to be qualified to act for the purpose of conducting alternative means of dispute resolution under this section.

“(c) SERVICES TO BE PROVIDED WITHOUT CHARGE.—Any services provided by the Board concerned or any Board judge or employee pursuant to this section shall be provided without charge.

“(d) RECUSAL OF CERTAIN PERSONNEL UPON REQUEST.—In the event that a matter which is presented to the Board concerned for alternative means of dispute resolution, pursuant to this section, later becomes the subject of formal proceedings before such Board, any Board judge or employee who was involved in the alternative means of dispute resolution shall, if requested by any party to the formal proceeding, take no part in that proceeding.”

SEC. 422. ALTERNATIVE DISPUTE RESOLUTION OF DISPUTES AND PROTESTS SUBMITTED TO BOARDS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 421, is further amended by adding at the end the following:

“SEC. 212. ALTERNATIVE DISPUTE RESOLUTION OF DISPUTES AND PROTESTS SUBMITTED TO BOARDS.

“With reasonable promptness after the submission to the Defense Board or the Civilian Board of a contract dispute under section 213 or a bid protest under section 214, a Board judge to whom the contract dispute or protest is assigned shall request the parties to meet with a Board judge, or an attorney employed by the Board concerned, for the purpose of attempting to resolve the dispute or protest through alternative means of dispute resolution. Formal proceedings in the appeal shall then be suspended until such time as any party or a Board judge to whom the dispute or protest is assigned determines that alternative means of dispute resolution are not appropriate for resolution of the dispute or protest.”

SEC. 423. CONTRACT DISPUTES.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 422, is further amended by adding at the end the following:

SEC. 213. CONTRACT DISPUTES.

"The Defense Board shall have jurisdiction as provided by section 8(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601-613). The Civilian Board shall have jurisdiction as provided by section 8(b) of such Act."

SEC. 424. PROTESTS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 423, is further amended by adding at the end the following:

SEC. 214. PROTESTS.

"(a) REVIEW REQUIRED UPON REQUEST.—Upon request of an interested party in connection with any procurement conducted by an executive agency, the Defense Board or the Civilian Board, as the case may be, shall review, as provided in this section, any decision by the head of the executive agency alleged to be arbitrary or capricious or to violate a statute or regulation. A decision or order of the Board concerned pursuant to this section shall not be subject to interlocutory appeal or review.

"(b) STANDARD OF REVIEW.—In deciding a protest, the Board concerned may consider all evidence that is relevant to the decision under protest. The protester may prevail only by showing that the decision was arbitrary or capricious or violated a statute or regulation.

"(c) NOTIFICATION.—Within one day after the receipt of a protest, the Board concerned shall notify the executive agency involved of the protest.

"(d) SUSPENSION OF CONTRACT AWARD.—(1) Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the executive agency has received notice of a protest with respect to such procurement from the Board concerned and while the protest is pending.

"(2) The head of the procuring activity responsible for award of a contract may authorize the award of the contract (notwithstanding a protest of which the executive agency has notice under this section)—

"(A) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board concerned under this section; and

"(B) after the Board concerned is advised of that finding.

"(3) A finding may not be made under paragraph (2)(A) of this subsection unless the award of the contract is otherwise likely to occur within 30 days after the making of such finding.

"(4) The suspension of the award under paragraph (1) shall not preclude the executive agency concerned from continuing the procurement process up to but not including the award of the contract.

"(e) SUSPENSION OF CONTRACT PERFORMANCE.—(1) A contractor awarded an executive agency contract may, during the period described in paragraph (4), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract unless the contracting officer responsible for the award of the contract withholds authorization to proceed with performance of the contract.

"(2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (4) if the contracting officer determines in writing that—

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

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

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

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

"(ii) if authorization for contract performance to proceed was not withheld in accordance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

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

"(C) The head of the procuring activity may authorize the performance of the contract (notwithstanding a protest of which the executive agency has notice under this section)—

"(i) upon a written finding that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision concerning the protest by the Board concerned; and

"(ii) after the Board concerned is notified of that finding.

"(4) The period referred to in paragraphs (2) and (3)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—

"(A) the date that is 10 days after the date of the contract award; or

"(B) the date that is 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.

"(f) The authority of the head of the procuring activity to make findings and to authorize the award and performance of contracts under subsections (d) and (e) of this section may not be delegated.

"(g) PROCEDURES.—

"(1) PROCEEDINGS AND DISCOVERY.—The Board concerned shall conduct proceedings and allow discovery to the minimum extent necessary for the expeditious, fair, and cost-effective resolution of the protest. The Board shall allow discovery only in a case in which the Board determines that the written submissions of the parties do not provide an adequate basis for a fair resolution of the protest. Such discovery shall be limited to material which is relevant to the grounds of protest or to such affirmative defenses as the executive agency involved, or any intervenor supporting the agency, may raise.

"(2) PRIORITY.—The Board concerned shall give priority to protests filed under this section over contract disputes and alternative dispute services. Except as provided in paragraph (3), the Board concerned shall issue its final decision within 65 days after the date of the filing of the protest, unless the Chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the Board concerned shall issue such decision within the longer period determined by the Chairman. An amendment that adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.

"(3) THRESHOLD.—(A) Except as provided in subparagraph (B), any protest in which the anticipated value of the contract award that will result from the protested procurement, as estimated by the executive agency involved, is less than \$30,000,000 shall be considered under simplified rules of procedure. Such simplified rules shall provide that discovery in such protests shall be in writing only. Such written discovery shall be the minimum necessary for the expeditious, fair, and cost-effective resolution of the protest and shall be allowed only if the Board determines that the written submissions of the

parties do not provide an adequate basis for a fair resolution of the protest. Such protests shall be decided by a single Board judge. The Board concerned shall issue its final decision in each such protest within 45 days after the date of the filing of the protest, unless the Chairman determines that the specific and unique circumstances of the protest require a longer period, in which case the Board concerned shall issue such decision within the longer period determined by the Chairman.

"(B) If the Chairman of the Board concerned determines that special and unique circumstances of a protest that would otherwise qualify for the simplified rules described in subparagraph (A), including the complexity of a protest, requires the use of full procedures as described in paragraphs (1) and (2), the Chairman shall use such procedures in lieu of the simplified rules described in subparagraph (A).

"(4) CALCULATION OF TIME FOR ADR.—In calculating time for purposes of paragraph (2) or (3) of this subsection, any days during which proceedings are suspended for the purpose of attempting to resolve the protest by alternative means of dispute resolution, up to a maximum of 20 days, shall not be counted.

"(5) DISMISSAL OF FRIVOLOUS PROTESTS.—The Board concerned may dismiss a protest that the Board concerned determines—

"(A) is frivolous,

"(B) has been brought or pursued in bad faith; or

"(C) does not state on its face a valid basis for protest.

"(6) PAYMENT OF COSTS FOR FRIVOLOUS PROTESTS.—(A) If the Board concerned expressly finds that a protest or a portion of a protest is frivolous or has been brought or pursued in bad faith, the Board concerned shall declare that the protester or other interested party who joins the protest is liable to the United States for payment of the costs described in subparagraph (B) unless—

"(i) special circumstances would make such payment unjust; or

"(ii) the protester obtains documents or other information after the protest is filed with the Board concerned that establishes that the protest or a portion of the protest is frivolous or has been brought or pursued in bad faith, and the protester then promptly withdraws the protest or portion of the protest.

"(B) The costs referred to in subparagraph (A) are all of the costs incurred by the United States of reviewing the protest, or of reviewing that portion of the protest for which the finding is made, including the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28, United States Code) incurred by the United States in defending the protest.

"(h) DECISIONS AND CORRECTIVE ACTIONS ON PROTESTS.—(1) In making a decision on protests filed under this section, the Board concerned shall accord due weight to the goals of economic and efficient procurement, and shall take due account of the rule of prejudicial error.

"(2) If the Board concerned determines that a decision of the head of the executive agency is arbitrary or capricious or violates a statute or regulation, the Board concerned may order the agency (or its head) to take such corrective action as the Board concerned considers appropriate. Corrective action includes requiring that the executive agency—

"(A) refrain from exercising any of its options under the contract;

"(B) recompetes the contract immediately;

"(C) issue a new solicitation;

"(D) terminate the contract;

“(E) award a contract consistent with the requirements of such statute and regulation;

“(F) implement any combination of requirements under subparagraphs (A), (B), (C), (D), and (E); or

“(G) implement such other actions as the Board concerned determines necessary.

“(3) If the Board concerned orders corrective action after the contract award, the affected contract shall be presumed valid as to all goods or services delivered and accepted under the contract before the corrective action was ordered.

“(4) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board concerned and shall be made a part of the public record (subject to any protective order considered appropriate by the Board concerned) before dismissal of the protest.

“(i) **AUTHORITY TO DECLARE ENTITLEMENT TO COSTS.**—(1)(A) Whenever the Board concerned determines that a decision of the head of an executive agency is arbitrary or capricious or violates a statute or regulation, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the costs of—

“(i) filing and pursuing the protest, including reasonable attorneys’ fees and consultant and expert witness fees, and

“(ii) bid and proposal preparation.

“(B) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be declared entitled under this paragraph to costs for—

“(i) consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government, or

“(ii) attorneys’ fees that exceed \$150 per hour unless the Board concerned, on a case by case basis, determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

“(2) Payment of amounts due from an agency under paragraph (1) or under the terms of a settlement agreement under subsection (h)(4) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The executive agency concerned shall reimburse that appropriation account out of funds available for the procurement.

“(j) **APPEALS.**—A final decision of the Board concerned may be appealed as set forth in section 8(g)(1) of the Contract Disputes Act of 1978 by the head of the executive agency concerned and by any interested party, including interested parties who intervene in any protest filed under this section.

“(k) **ADDITIONAL RELIEF.**—Nothing contained in this section shall affect the power of the Board concerned to order any additional relief which it is authorized to provide under any statute or regulation.

“(l) **NONEXCLUSIVITY OF REMEDIES.**—Nothing contained in this section shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims or in a United States district court.”

SEC. 425. APPLICABILITY TO CERTAIN CONTRACTS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 424, is further amended by adding at the end the following:

“SEC. 215. APPLICABILITY TO CERTAIN CONTRACTS.

“(a) **CONTRACTS AT OR BELOW THE SIMPLIFIED ACQUISITION THRESHOLD.**—Notwith-

standing section 33 of this Act, the authority conferred on the Defense Board and the Civilian Board by this title is applicable to contracts in amounts not greater than the simplified acquisition threshold.

“(b) **CONTRACTS FOR COMMERCIAL ITEMS.**—Notwithstanding section 34 of this Act, the authority conferred on the Defense Board and the Civilian Board by this title is applicable to contracts for the procurement of commercial items.”

Subtitle D—Repeal of Other Statutes Authorizing Administrative Protests

SEC. 431. REPEALS.

(a) **GSBKA PROVISIONS.**—Subsection (f) of the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949; 40 U.S.C. 759) is repealed.

(b) **GAO PROVISIONS.**—(1) Subchapter V of chapter 35 of title 31, United States Code (31 U.S.C. 3551-3556) is repealed.

(2) The analysis for chapter 35 of such title is amended by striking out the items relating to sections 3551 through 3556 and the heading for subchapter V.

Subtitle E—Transfers and Transitional, Savings, and Conforming Provisions

SEC. 441. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) **TRANSFERS.**—

(1) **ARMED SERVICES AND CORPS BOARDS OF CONTRACT APPEALS.**—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the Armed Services Board of Contract Appeals and the board of contract appeals of the Corps of Engineers established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date described in section 451), shall be transferred to the Department of Defense Board of Contract Appeals for appropriate allocation by the Chairman of that Board.

(2) **OTHER BOARDS OF CONTRACTS APPEALS.**—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date described in section 451) other than the Armed Services Board of Contract Appeals, the board of contract appeals of the Corps of Engineers, and the Postal Service Board of Contract Appeals shall be transferred to the Civilian Board of Contract Appeals for appropriate allocation by the Chairman of that Board.

(3) **COMPTROLLER GENERAL.**—(A) One-quarter (as determined by the Comptroller General) of the personnel employed in connection with, and one-quarter (as determined by the Comptroller General) of the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the Comptroller General pursuant to subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date described in section 451), shall be transferred to the Civilian Board of Contract Appeals for appropriate allocation by the Chairman of that Board.

(B) Three-quarters (as determined by the Comptroller General) of the personnel em-

ployed in connection with, and three-quarters (as determined by the Comptroller General) of the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the Comptroller General pursuant to subchapter V of chapter 35 of title 31, United States Code (as in effect on the day before the effective date described in section 451), shall be transferred to the Department of Defense Board of Contract Appeals for appropriate allocation by the Chairman of that Board.

(b) **EFFECT ON PERSONNEL.**—Personnel transferred pursuant to this subtitle shall not be separated or reduced in compensation for one year after such transfer, except for cause.

(c) **REGULATIONS.**—(1) The Department of Defense Board of Contract Appeals and the Civilian Board of Contract Appeals shall each prescribe regulations for the release of competing employees in a reduction in force that gives due effect to—

- (A) efficiency or performance ratings;
- (B) military preference; and
- (C) tenure of employment.

(2) In prescribing the regulations, the Board concerned shall provide for military preference in the same manner as set forth in subchapter I of chapter 35 of title 5, United States Code.

SEC. 442. TERMINATIONS AND SAVINGS PROVISIONS.

(a) **TERMINATION OF BOARDS OF CONTRACT APPEALS.**—Effective on the effective date described in section 451, the boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before such effective date) other than the Postal Service Board of Contract Appeals shall terminate.

(b) **SAVINGS PROVISION FOR CONTRACT DISPUTE MATTERS PENDING BEFORE BOARDS.**—(1) This title and the amendments made by this title shall not affect any proceedings (other than bid protests pending before the board of contract appeals of the General Services Administration) pending on the effective date described in section 451 before any board of contract appeals terminated by subsection (a).

(2) In the case of any such proceedings pending before the Armed Services Board of Contract Appeals or the board of contract appeals of the Corps of Engineers, the proceedings shall be continued by the Department of Defense Board of Contract Appeals, and orders which were issued in any such proceeding by the Armed Services Board of Contract Appeals or the board of contract appeals of the Corps of Engineers shall continue in effect until modified, terminated, superseded, or revoked by the Department of Defense Board of Contract Appeals, by a court of competent jurisdiction, or by operation of law.

(3) In the case of any such proceedings pending before an agency board of contract appeals other than the Armed Services Board of Contract Appeals or the board of contract appeals of the Corps of Engineers, the proceedings shall be continued by the Civilian Board of Contract Appeals, and orders which were issued in any such proceeding by the agency board shall continue in effect until modified, terminated, superseded, or revoked by the Civilian Board of Contract Appeals, by a court of competent jurisdiction, or by operation of law.

(c) **BID PROTEST TRANSITION PROVISIONS.**—(1) No protest may be submitted to the Comptroller General pursuant to section 3553(a) of title 31, United States Code, or to the board of contract appeals for the General

Services Administration pursuant to the Brooks Automatic Data Processing Act (40 U.S.C. 759) on or after the effective date described in section 451.

(2)(A) In the case of bid protest proceedings pending before the board of contract appeals of the General Services Administration on the effective date described in section 451—

(i) with respect to bid protests involving procurements of the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, the proceedings shall be continued by the Defense Board of Contract Appeals; and

(ii) with respect to bid protests involving procurements of any other executive agency (as defined by section 4(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(l))), the proceedings shall be continued by the Civilian Board of Contract Appeals.

(B) The provisions repealed by section 431(a) shall continue to apply to such proceedings until the Department of Defense Board of Contract Appeals or the Civilian Board of Contract Appeals, as the case may be, determines such proceedings have been completed.

(3)(A) In the case of bid protest proceedings pending before the Comptroller General on the effective date described in section 451—

(i) with respect to bid protests involving procurements of the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, the proceedings shall be continued by the Defense Board of Contract Appeals;

(ii) with respect to bid protests involving procurements of any other executive agency (as defined by section 4(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(l))), the proceedings shall be continued by the Civilian Board of Contract Appeals; and

(iii) with respect to bid protests involving procurements of an entity that is not an executive agency, the proceedings shall be continued by the Comptroller General.

(B) The provisions repealed by section 431(b) shall continue to apply to such bid protest proceedings until the Department of Defense Board of Contract Appeals, the Civilian Board of Contract Appeals, or the Comptroller General, as the case may be, determines that such proceedings have been completed.

SEC. 443. CONTRACT DISPUTES AUTHORITY OF BOARDS.

(a) Section 2 of the Contract Disputes Act of 1978 (41 U.S.C. 601) is amended—

(1) in paragraph (2), by striking out “, the United States Postal Service, and the Postal Rate Commission”;

(2) by amending paragraph (6) to read as follows:

“(6) the term ‘Defense Board’ means the Department of Defense Board of Contract Appeals established under section 8(a) of this Act;”;

(3) by redesignating paragraph (7) as paragraph (8); and

(4) by inserting after paragraph (6) the following new paragraph (7):

“(7) the term ‘Civilian Board’ means the Civilian Board of Contract Appeals established under section 8(b) of this Act; and”.

(b) Section 6(c)(6) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(6)) is amended—

(1) by striking out “court or an agency board of contract appeals” and inserting in lieu thereof “court, the Defense Board, or the Civilian Board”;

(2) by striking out “an agency board of contract appeals” in the third sentence and inserting in lieu thereof “the Defense Board or the Civilian Board”;

(3) by striking out “agency board” and inserting in lieu thereof “the Board concerned”.

(c) Section 7 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by striking out “an agency board of contract appeals” and inserting in lieu thereof “the Defense Board or the Civilian Board”.

(d) Section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607), as amended by section 411, is further amended—

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

“DEFENSE AND CIVILIAN BOARDS OF CONTRACT APPEALS”;

(2) by striking out subsection (c);

(3) in subsection (d)—

(A) by striking out the first sentence and inserting in lieu thereof the following:

“The Defense Board shall have jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, or the Department of the Air Force relative to a contract made by that department. The Civilian Board shall have jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Postal Service, or the Postal Rate Commission) relative to a contract made by that agency.”; and

(B) in the second sentence, by striking out “the agency board” and inserting in lieu thereof “the Board concerned”;

(4) in subsection (e), by striking out “An agency board shall provide” and inserting in lieu thereof “The Defense Board and the Civilian Board shall each provide.”;

(5) in subsection (f), by striking out “each agency board” and inserting in lieu thereof “the Defense Board and the Civilian Board”;

(6) in subsection (g)—

(A) in the first sentence of paragraph (1), by striking out “an agency board of contract appeals” and inserting in lieu thereof “the Defense Board or the Civilian Board, as the case may be.”;

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

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

(7) by striking out subsection (h) and inserting in lieu thereof the following:

“(h) There is established an agency board of contract appeals to be known as the ‘Postal Service Board of Contract Appeals’. Such board shall have jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Rate Commission relative to a contract made by either agency. Such board shall consist of judges appointed by the Postmaster General who shall meet the qualifications of and serve in the same manner as judges of the Civilian Board of Contract Appeals. This Act and title II of the Office of Federal Procurement Policy Act shall apply to contract disputes before the Postal Service Board of Contract Appeals in the same manner as they apply to contract disputes before the Civilian Board.”; and

(8) by striking out subsection (i).

(e) Section 9 of the Contract Disputes Act of 1978 (41 U.S.C. 608) is amended—

(1) in subsection (a), by striking out “each agency board” and inserting in lieu thereof “the Defense Board and the Civilian Board”; and

(2) in subsection (b), by striking out “the agency board” and inserting in lieu thereof “the Board concerned”.

(f) Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended—

(1) in subsection (a)—

(A) in the first sentence of paragraph (1)—

(i) by striking out “Except as provided in paragraph (2), and in” and inserting in lieu thereof “In”; and

(ii) by striking out “an agency board” and inserting in lieu thereof “the Defense Board or the Civilian Board”;

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

(C) by redesignating paragraph (3) as paragraph (2), and in that paragraph by striking out “or (2)”;

(2) in subsection (b)—

(A) by striking out “any agency board” and inserting in lieu thereof “the Defense Board or the Civilian Board”; and

(B) by striking out “the agency board” and inserting in lieu thereof “the Board concerned”;

(3) in subsection (c)—

(A) by striking out “an agency board” and inserting in lieu of each “the Defense Board or the Civilian Board”; and

(B) by striking out “the agency board” and inserting in lieu thereof “the Board concerned”; and

(4) in subsection (d)—

(A) by striking out “one or more agency boards” and inserting in lieu thereof “the Defense Board or the Civilian Board (or both)”;

(B) by striking out “or among the agency boards involved” and inserting in lieu thereof “one or both of the Boards”.

(g) Section 11 of the Contract Disputes Act of 1978 (41 U.S.C. 610) is amended—

(1) in the first sentence, by striking out “an agency board of contract appeals” and inserting in lieu thereof “the Defense Board or the Civilian Board”; and

(2) in the second sentence, by striking out “the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority” and inserting in lieu thereof “the Defense Board or the Civilian Board”.

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

(1) in subsection (b), by striking out “an agency board of contract appeals” and inserting in lieu thereof “the Defense Board or the Civilian Board”; and

(2) in subsection (d)(2), by striking out “by the board of contract appeals for” and inserting in lieu thereof “by the Defense Board or the Civilian Board from”.

SEC. 444. REFERENCES TO AGENCY BOARDS OF CONTRACT APPEALS.

(a) DEFENSE BOARD.—Any reference to the Armed Services Board of Contract Appeals or the board of contract appeals of the Corps of Engineers in any provision of law or in any rule, regulation, or other paper of the United States shall be treated as referring to the Department of Defense Board of Contract Appeals.

(b) CIVILIAN BOARD.—Any reference to an agency board of contract appeals other than the Armed Services Board of Contract Appeals, the board of contract appeals of the Corps of Engineers, or the Postal Service Board of Contract Appeals in any provision of law or in any rule, regulation, or other paper of the United States shall be treated as referring to the Civilian Board of Contract Appeals.

SEC. 445. CONFORMING AMENDMENTS.

(a) TITLE 5.—Section 5372a of title 5, United States Code, is amended—

(1) in subsection (a)(1), by striking out “an agency board of contract appeals appointed under section 8 of the Contract Disputes Act of 1978” and inserting in lieu thereof “the Department of Defense Board of Contract Appeals or the Civilian Board of Contract Appeals appointed under section 202 of the Office of Federal Procurement Policy Act or the Postal Service Board of Contract Appeals appointed under section 8(h) of the Contract Disputes Act of 1978”; and

(2) in subsection (a)(2), by striking out “an agency board of contract appeals” and inserting in lieu thereof “the Department of

Defense Board of Contract Appeals, the Civilian Board of Contract Appeals, or the Postal Service Board of Contract Appeals”.

(b) TITLE 10.—(1) Section 2305(e) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out “subchapter V of chapter 35 of title 31” and inserting in lieu thereof “title II of the Office of Federal Procurement Policy Act”; and

(B) by striking out paragraph (3).

(2) Section 2305(f) of such title is amended—

(A) in paragraph (1), by striking out “subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31” and inserting in lieu thereof “section 214(h)(2) of the Office of Federal Procurement Policy Act”; and

(B) in paragraph (2), by striking out “paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2)” and inserting in lieu thereof “subparagraph (A) of section 214(i)(1) of the Office of Federal Procurement Policy Act within the limits referred to in subparagraph (B)”.

(c) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—(1) Section 303B(j) (as redesignated by section 104(b)(2)) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(h)) is amended—

(A) in paragraph (1), by striking out “subchapter V of chapter 35 of title 31, United States Code” and inserting in lieu thereof “title II of the Office of Federal Procurement Policy Act”; and

(B) by striking out paragraph (3).

(2) Section 303B(k) (as redesignated by section 104(b)(2)) of such Act (41 U.S.C. 253b(i)) is amended—

(A) in paragraph (1), by striking out “in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31, United States Code” and inserting in lieu thereof “section 214(h)(2) of the Office of Federal Procurement Policy Act”; and

(B) in paragraph (2), by striking out “paragraph (1) of section 3554(c) of such title within the limits referred to in paragraph (2)” and inserting in lieu thereof “subparagraph (A) of section 214(i)(1) of the Office of Federal Procurement Policy Act within the limits referred to in subparagraph (B)”.

(d) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended—

(1) by inserting the following before the item relating to section 1:

“TITLE I—FEDERAL PROCUREMENT POLICY GENERALLY”; and

(2) by adding at the end the following:

“TITLE II—DISPUTE RESOLUTION
“SUBTITLE A—GENERAL PROVISIONS

“Sec. 201. Definitions.

“Sec. 202. Membership.

“Sec. 203. Chairman.

“Sec. 204. Rulemaking authority.

“Sec. 205. Authorization of appropriations.

“SUBTITLE B—FUNCTIONS OF THE DEFENSE AND CIVILIAN BOARDS OF CONTRACT APPEALS

“Sec. 211. Alternative dispute resolution services.

“Sec. 212. Alternative dispute resolution of disputes and protests submitted to Boards.

“Sec. 213. Contract disputes.

“Sec. 214. Protests.

“Sec. 215. Applicability to certain contracts.”.

Subtitle F—Effective Date; Regulations and Appointment of Chairmen

SEC. 451. EFFECTIVE DATE.

Title II of the Office of Federal Procurement Policy Act, as added by this title, and the amendments and repeals made by this

title shall take effect 1 year after the date of the enactment of this Act.

SEC. 452. REGULATIONS.

(a) REGULATIONS REGARDING PROTESTS AND CLAIMS.—Not later than 1 year after the date of the enactment of this Act, the Chairman of the Armed Services Board of Contract Appeals and the Chairman of the General Services Board of Contract Appeals, in consultation with the Comptroller General with respect to protests, shall jointly issue—

(1) such procedural rules and regulations as are necessary to the exercise of the functions of the Department of Defense Board of Contract Appeals and the Civilian Board of Contract Appeals under sections 213 and 214 of the Office of Federal Procurement Policy Act (as added by this title); and

(2) statements of policy of general applicability with respect to such functions.

(b) REGULATIONS REGARDING APPOINTMENT OF JUDGES.—Not later than 1 year after the date of the enactment of this Act—

(1) the Chairman of the Armed Services Board of Contract Appeals shall issue rules governing the establishment and maintenance of a register of eligible applicants and the selection of judges for the Department of Defense Board of Contract Appeals; and

(2) the Chairman of the General Services Board of Contract Appeals shall issue rules governing the establishment and maintenance of a register of eligible applicants and the selection of judges for the Civilian Board of Contract Appeals.

SEC. 453. APPOINTMENT OF CHAIRMEN OF DEFENSE BOARD AND CIVILIAN BOARD.

Notwithstanding section 451, not later than 1 year after the date of the enactment of this Act—

(1) the Secretary of Defense shall appoint the Chairman of the Department of Defense Board of Contract Appeals; and

(2) the Administrator of General Services shall appoint the Chairman of the Civilian Board of Contract Appeals.

(2) Page 12, lines 2 and 23, strike out “chapter” and insert in lieu thereof “title”.

(3) Page 26, line 18, strike out “and” and insert in lieu thereof “but”.

(4) Page 28, line 14, strike out “and” and insert in lieu thereof “but”.

(5) Add at the end of section 302 (at the end of page 51) the following:

(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 refers to this subsection and provides that, notwithstanding this subsection, such a certification shall be required.

Page 50, line 18, strike out “(b)” and insert in lieu thereof “(c)”.

(6) Page 52, line 10, strike out “August 1, 1995” and insert in lieu thereof “October 1, 1996”.

Page 52, lines 10 and 11, strike out “August 1, 2000” and insert in lieu thereof “October 1, 2000”.

(7) Add at the end of section 306 (at the end of page 65) the following new subsection:

(e) REPEAL OF DATA COLLECTION REQUIREMENT.—Subsection (h) of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is repealed.

(8) Strike out section 316 (page 75, line 15, through the end of page 81) and insert in lieu thereof the following:

SEC. 316. ADDITIONAL DEPARTMENT OF DEFENSE PILOT PROGRAMS.

(a) AUTHORITY TO CONDUCT DEFENSE FACILITY-WIDE PILOT PROGRAM.—The Secretary of

Defense may conduct a pilot program, to be known as the “defense facility-wide pilot program”, for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in facilities.

(b) SCOPE OF PROGRAM.—At a facility designated as a participant in the pilot program, the pilot program shall consist of the following:

(1) All contracts and subcontracts for defense supplies and services that are performed at the facility.

(2) All contracts and subcontracts performed elsewhere that the Secretary determines are directly and substantially related to the production of defense supplies and services at the facility and are necessary for the pilot program.

(c) DESIGNATION OF PARTICIPATING FACILITIES.—(1) The Secretary may designate up to two facilities as participants in the defense facility-wide pilot program.

(2) Subject to subsection (g), the Secretary may determine the scope and duration of a designation made under this paragraph.

(d) CRITERIA FOR DESIGNATION.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary shall provide to the congressional defense committees a detailed description of the proposed criteria to be used in selecting facilities for designation as participants in the defense facility-wide pilot program. The Secretary may not select any facilities for participation in the program until at least 30 days have passed after providing such criteria.

(2) After selecting both facilities for designation as participants in the program, the Secretary shall notify the congressional defense committees of the selection and submit a description—

(A) of the management goals and objectives intended to be achieved for each facility selected; and

(B) of the method by which the Secretary intends to monitor and measure the performance of the selected facilities in meeting such management goals and objectives.

(3)(A) In developing the criteria referred to paragraph (1), the Secretary shall ensure that such criteria reflect the following objectives:

(i) A significant reduction of the cost to the Government for programs carried out at the designated facilities.

(ii) A reduction of the schedule associated with programs carried out at the designated facilities.

(iii) An increased used of commercial practices and procedures for programs carried at the designated facilities.

(iv) That the designation of a facility under subsection (c) does not place a competing domestic manufacturer at a significant competitive disadvantage.

(B) The criteria shall also require that, with respect to any facility designated under subsection (c), all or substantially all of the contracts to be awarded and performed at the facility after the designation, and all or substantially all of the subcontracts to be awarded under those contracts and performed at the facility after the designation, will be—

(i) for the production of supplies or services on a firm-fixed price basis;

(ii) awarded without requiring the contractors or subcontractors to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

(iii) awarded and administered without the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)).

(e) EXEMPTION FROM CERTAIN REQUIREMENTS.—In the case of a contract or subcontract that is to be performed at a facility

designated for participation in the defense facility-wide pilot program and that is subject to section 2306a of title 10, United States Code, or section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)), the Secretary of Defense may exempt such contract or subcontract from the requirement to obtain certified cost or pricing data under such section 2306a or the requirement to apply mandatory cost accounting standards under such section 26(f) if the Secretary determines that the contract or subcontract—

(1) is within the scope of the pilot program (as described in subsection (b)); and

(2) is fairly and reasonably priced based on information other than certified cost and pricing data.

(f) SPECIAL AUTHORITY.—The authority provided under subsection (a) may include authority for the Secretary of Defense—

(1) to apply any amendment or repeal of a provision of law made in this Act to the pilot program before the effective date of such amendment or repeal; and

(2) to apply to a procurement of items other than commercial items under such program—

(A) any authority provided in the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) (or in an amendment made by a provision of that Act) to waive a provision of law in the case of commercial items, and

(B) any exception applicable under this Act or the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) (or an amendment made by a provision of either Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

(g) APPLICABILITY.—(1) Subsections (e) and (f) apply with respect to—

(A) a contract that is awarded or modified during the period described in paragraph (2); and

(B) a contract that is awarded before the beginning of such period and is to be per-

formed (or may be performed), in whole or in part, during such period.

(2) The period referred to in paragraph (1) is the period that begins 45 days after the date of the enactment of this Act and ends on September 30, 1998.

(h) COMMERCIAL PRACTICES ENCOURAGED.—With respect to contracts and subcontracts within the scope of the defense facility-wide pilot program, the Secretary of Defense may, to the extent the Secretary determines appropriate and in accordance with the law, adopt commercial practices in the administration of contracts and subcontracts. Such commercial practices may include elimination of Government audit and access to records provisions; incorporation of commercial oversight, inspection, and acceptance procedures; use of alternative dispute resolution techniques (including arbitration); and elimination of contract provisions authorizing the Government to make unilateral changes to contracts.

(9) In sections 501 and 502 (page 143, line 23, through the end of page 146), strike out “title” each place it appears and insert in lieu thereof “Act”.